Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

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Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

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(q) The Nebraska Department of Environment and Energy submitted revisions to NDEQ Title 129 Chapter 8 ''Operating Permit Content'' on July 19, 2019. The State effective date is June 24, 2019. The revision effective date is June 15, 2020.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2016–0137; FRL–10008–15–Region 5]

Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Muncie, Indiana Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the April 14, 2016, request from the Indiana Department of Environmental Management (IDEM) to redesignate the Muncie nonattainment area to attainment for the 2008 national ambient air quality standards (NAAQS) for lead. EPA is also approving the State's maintenance plan and attainment year emission inventory for lead. EPA is approving these actions in accordance with the Clean Air Act (CAA) and EPA's implementation regulations and guidance regarding the 2008 lead NAAQS.

DATES: This final rule is effective on May 15, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2016–0137. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Mary Portanova at (312) 353–5954 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is being addressed by this document?

On May 30, 2017 (82 FR 24553), EPA issued a direct final approval and associated proposed rulemaking (82 FR 24635) addressing Indiana's April 14, 2016 submittal of a redesignation request, maintenance plan, and attainment year lead emissions inventory for the Muncie lead nonattainment area. The main source of lead emissions in the Muncie area is the Exide Technologies secondary lead smelter. See the direct final action for the full discussion of our basis for approval. Because we received adverse comments on the direct final approval, we withdrew the direct final approval on July 10, 2017 (82 FR 31722). Below, we address the comments that we received, and finalize our proposed rulemaking action.

II. What comments did we receive on the proposed action and what are EPA's responses to those comments?

EPA received a set of comments from one party during the public comment period on the May 30, 2017 action. The comments, and EPA's response to each comment, are as follows:

Comment: The commenter stated that the proposal ''incorrectly states that the 2015 ambient monitoring data is the most recent available. That is not true and it wasn't even true when the Acting Regional Administrator signed the rule. EPA has a legal and moral obligation to not provide false information in **Federal Register** notices. Thus, EPA should publish a supplemental proposal that includes the 2016 ambient monitoring data which was final by no later than May 1, 2017.''

EPA Response: Indiana submitted its redesignation request to EPA on April 14, 2016. The State included Muncie lead monitoring data from 2013–2015 in its submittal. At the time of Indiana's submittal, these data represented the most recent available full three years of monitoring data, and EPA used them in evaluating Indiana's redesignation request.

Indiana is required to certify and submit to EPA each year of air quality monitoring data by May 1 of the following year. For 2016 data, the deadline for state certification was May 1, 2017. The Regional Administrator signed the proposal to redesignate the Muncie area on May 4, 2017. During the time that EPA staff were reviewing Indiana's submittal and preparing the notice of proposed rulemaking, monitoring data for 2016 was not yet certified, and the ''most recent'' fully certified data during this time was the data through 2015, which showed attainment of the 2008 lead NAAQS. The 2008 lead NAAQS are met when the maximum arithmetic three-month mean concentration for a three-year period is less than or equal to 0.15 micrograms per cubic meter ($\mu g/m^3$). See 40 CFR 50.16. The maximum three-month average lead concentration over three years is also known as the design value. Although the 2016 data was certified a few days before EPA's notice of proposed rulemaking was signed, the 2015 monitor data was clearly the most recent certified, quality-assured data available at the time of the State's redesignation request and during EPA's review process, and the 2013–2015 design value was the appropriate measure for evaluating the State's redesignation request and proposing action. As the preliminary 2016 data continued to show attainment of the 2008 lead NAAQS, EPA did not delay its action on the redesignation.

Moreover, air quality monitoring data at the Muncie lead monitor continues to show that the area is attaining the 2008 lead NAAQS, providing further support for EPA's finding that the area has attained the NAAQS under CAA section 107(d)(3)(E)(i). Table 1 below includes all fully certified and preliminary data available for the area and shows that the area's lead design value is well below the level of the NAAQS.

EPA does not agree that a supplemental proposal is required under these circumstances. The CAA contemplates that EPA publish a

proposed and final rule in order to effectuate redesignations. CAA section 107(d)(2). It is not reasonable to require additional supplemental proposals every time additional data becomes available, given that new preliminary and certified data are continually updated, nor is it necessary. Where an area has violated the NAAQS such that EPA can no longer find that the area is attaining, EPA has disapproved redesignations. *See Southwestern Pa. Growth Alliance* v. *Browner,* 121 F.3d 106 (3rd Cir. 1997) (upholding EPA's disapproval of a redesignation and stating in dicta, ''The use of the term ''has attained'' . . . may be interpreted as suggesting that the attainment must continue until the date of the redesignation.''); *Kentucky* v. *EPA,* No. 96–4274, 1998 U.S. App. LEXIS 21686, at *11–12 (6th Cir. Sept. 2, 1998) (affirming EPA's disapproval of a redesignation and finding that ''[a]s the EPA interprets the CAA, the CAA requires the EPA to determine attainment based on all data available at the time the EPA issues its ruling.'').

TABLE 1—THREE-MONTH ROLLING LEAD AVERAGES AND DESIGN VALUES FOR MUNCIE, INDIANA
[2012–2019]

Three-Month Rolling Lead Averages (μg/m3) for Muncie-Mt. Pleasant Blvd. (18–035–0009)												Three-Year Design Values
2012												
Nov 2011–Jan 2012	Dec 2011–Feb 2012	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	3-Year Design Value Period (years)
0.30	0.34	0.29	0.17	0.12	0.11	0.09	0.05	0.06	0.05	0.05	0.05	DV (μg/m3)
2013												
Nov 2012–Jan 2013	Dec 2012–Feb 2013	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	
0.05	0.06	0.04	0.03	0.03	0.03	0.03	0.04	0.04	0.05	0.04	0.04	
2014												
Nov 2013–Jan 2014	Dec 2013–Feb 2014	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	2012–2014
0.03	0.04	0.04	0.04	0.04	0.05	0.05	0.04	0.03	0.03	0.03	0.03	0.34
2015												
Nov 2014–Jan 2015	Dec 2014–Feb 2015	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	2013–2015
0.03	0.03	0.04	0.05	0.06	0.06	0.06	0.05	0.03	0.04	0.04	0.11	0.11
2016												
Nov 2015–Jan 2016	Dec 2015–Feb 2016	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	2014–2016
0.11	0.10	0.03	0.02	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.11
2017												
Nov 2016–Jan 2017	Dec 2016–Feb 2017	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	2015–2017
0.03	0.03	0.02	0.02	0.03	0.03	0.04	0.04	0.03	0.04	0.03	0.04	0.11
2018												
Nov 2017–Jan 2018	Dec 2017–Feb 2018	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	2016–2018
0.03	0.03	0.01	0.01	0.02	0.02	0.02	0.01	0.01	0.02	0.02	0.02	0.11
2019												
Not yet certified Nov 2018–Jan 2019	Dec 2018–Feb 2019	Jan–Mar	Feb–Apr	Mar–May	Apr–Jun	May–Jul	Jun–Aug	Jul–Sep	Aug–Oct	Sep–Nov	Oct–Dec	[1] 2017–2019
0.02	0.02	0.02	0.02	0.02	0.03	0.03	0.03	0.03	0.03	0.02	0.02	0.04

[1] Maximum 3-month value through December 2019; not a valid DV until certified.

Comment: The commenter stated that EPA has not met criterion 3 of the redesignation requirements. The fact that the National Emission Standards for Hazardous Air Pollutants (NESHAP) for secondary lead smelters applies to Exide Technologies does not establish that the implementation of the NESHAP caused the area to come into attainment.

EPA Response: To meet criterion 3, the EPA Administrator must determine that the improvement in air quality is due to permanent and enforceable emission reductions resulting from

implementation of the applicable SIP, Federal air pollution control regulations, or other permanent and enforceable emission reductions. The Exide Technologies facility is subject to the NESHAP as well as to lead emission limits and control requirements in the federally approved Indiana SIP, which are permanent and enforceable at all times. The Indiana SIP limits on emissions units at Exide Technologies and the requirements for total plant enclosure and control of fugitive dust emissions at Exide are contained in 326 Indiana Administrative Code (IAC) 20–13.1. EPA approved 326 IAC 20–13.1 [1] into the Indiana SIP on July 17, 2015 (80 FR 42393). Therefore, EPA finds that the Indiana SIP contains permanent and enforceable limits for Exide Technologies in Muncie.

Indiana has been working to reduce ambient lead concentrations in Muncie over many years. Lead emission control measures were implemented at Exide Technologies over time, both before and after the current NESHAP was implemented. The Muncie area was designated nonattainment for the 2008 lead NAAQS on November 22, 2010 (75 FR 71033). The NESHAP for secondary lead smelters was amended on January 5, 2012 (77 FR 556). At that time, Exide Technologies was already complying with the previous version of the NESHAP. Indiana's SIP rule 326 IAC 20–13.1 contains lead emission standards for some emission units which are more stringent than those in the NESHAP. Exide was required to comply with the SIP limits by October 1, 2013. Indiana informed EPA that some of the physical controls required in the 2012 NESHAP were already in place at Exide Technologies before 2012. Indiana also confirmed that, following inspections in 2012 by IDEM and EPA staff, multiple housekeeping adjustments were made at the plant after the nonattainment designation, which improved the facility's ability to control its fugitive lead emissions and helped to bring the facility operations into full compliance with the NESHAP and the SIP emission limits. For example, Exide Technologies revised its procedures for servicing baghouse control devices to avoid allowing fugitive material to escape the enclosed space; located and sealed gaps and areas of leakage in the enclosed buildings; and installed or upgraded monitors for measuring the negative pressure inside the facility.

[1] EPA's July 17, 2015 approval excluded certain sections of 326 IAC 20–13.1–1, 20–13.1–5, 20–13.1–10, 20–13.1–11, 20–13.1–12, 20–13.1–13, 20–13.1–14; and all of 326 IAC 20–13.1–15. See 40 CFR 52.770(c).

Muncie's ambient lead concentrations began to improve in mid-2012, although its three-year design value still showed nonattainment of the 2008 lead NAAQS for 2012–2014. The highest three-month average lead monitor reading in Muncie after its nonattainment designation was for December 2011–February 2012 (0.34 $\mu g/m^3$). Since that time, the three-month rolling average values at the Muncie monitor dropped rapidly, with no further three-month rolling averages exceeding the level of the 2008 lead NAAQS recorded at the site after the February–April 2012 (0.17 $\mu g/m^3$) averaging period. The Muncie area reached full attainment of the 2008 lead NAAQS as of the 2013–2015 design value period. The area has continued to attain the 2008 lead NAAQS for three more years, through the 2016–2018 design value period. Preliminary 2019 data also suggest that the area is still attaining the 2008 lead NAAQS. See Table 1. EPA is satisfied that the imposition of the NESHAP and SIP emission control requirements for Exide Technologies, with full compliance facilitated by Exide Technologies' recently improved housekeeping measures and operating procedures, was, in fact, responsible for the reduction in lead emissions and the improvement in Muncie's monitored lead concentrations since the Muncie lead nonattainment designation.

Comment: The commenter stated that to the extent that the NESHAP for secondary lead smelting ''does not apply during startup, shutdown, and/or malfunction,'' the Exide Technologies facility is not subject to any enforceable emission limits during startup, shutdown, and/or malfunction, and accordingly, criterion 3 is not met.

EPA Response: The commenter is incorrect that the lead standard ''does not apply'' during those periods of startup, shutdown, or malfunction (SSM). The NESHAP for secondary lead smelters does not contain exemptions from emission limits for lead during SSM; the existing exemptions in the NESHAP apply only to emissions of dioxins and furans. *Compare, e.g.,* 40 CFR 63.543(a)–(b) (lead standards for process vents), *with id.* § 63.543(c) (furan and dioxin standards for process vents). Accordingly, for purposes of the Muncie area's attainment of the 2008 lead NAAQS, the permanent and enforceable measure within the secondary lead smelter NESHAP contributing to that attainment applies at all times.

The NESHAP for secondary lead smelters presently contains a provision that purports to allow a source, in limited circumstances, to assert an affirmative defense to civil penalty claims for exceedances caused by a narrow category of malfunctions.[2] *See* 40 CFR 63.552. For two reasons, this narrowly crafted affirmative defense provision is no barrier to redesignation.

First, this affirmative defense does not legally or functionally ''exempt'' covered sources from any emission standards because even with the affirmative defense provision, any exceedance of the emission standard at any time is still a violation. The provision is expressly ''not available for claims for injunctive relief.'' *Id.* Accordingly, even for that narrow category of malfunction-caused exceedances, any exceedance is a violation of the emission standard and the NESHAP can be enforced through suits for injunctive relief by states, EPA, and affected citizens. *See, e.g.,* 42 U.S.C. 7604(a)(1), (f)(3). With respect to lead emissions in Muncie, the ready availability of this injunctive relief ensures that the state and Federal regulators, as well as the public, can effectively enforce the NESHAP at Exide Technologies. This approach is consistent with other EPA redesignations. *See, e.g.,* 79 FR 55645, 55649 (September 17, 2014) (affirmative defense in SIP provision was ''sufficiently enforceable for purposes of redesignation'' because of, *inter alia,* the ''continued availability of injunctive relief'').

Second, regardless of the permanent and enforceable reductions pursuant to the lead NESHAP, Indiana's approved lead SIP contains additional provisions applicable to the Exide Technologies facility. Although some of these provisions are based on the NESHAP for secondary lead smelters, these approved SIP rules do not include any exemptions or affirmative defense provisions for lead or any other pollutants. Pertinent to the issue of startup, shutdown, and malfunction, the Indiana SIP rule for secondary lead smelters states at 326 IAC 20–13.1–1(f), ''Emission standards in this rule apply at all times.'' Additionally, 326 IAC 20–13.1–5(h) requires, ''At all times, the owner or operator of a secondary lead smelter shall operate and maintain any affected emission unit, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.'' Although, as a matter of State law, Indiana's rule 326 IAC 20–13.1–15 contains affirmative

[2] As a legal matter, this narrowly crafted affirmative defense does not ''exempt'' sources in Muncie or elsewhere from the NESHAP.

defense language for malfunctions similar to that of the NESHAP, the provision is not part of Indiana's approved, federally enforceable lead SIP. *See* 80 FR 42393, 42394 (July 17, 2015) (noting that Indiana expressly asked EPA not to approve 326 IAC 20–13.1–15 into the lead SIP); 40 CFR 52.770(c) (identifying EPA-approved rules). Therefore, regardless of the enforceability of the lead NESHAP, EPA is satisfied that Indiana's federally enforceable lead SIP requirements for Exide Technologies do not contain any exemptions for emissions during SSM, despite the commenter's allegations.

Comment: The commenter stated that the ambient monitoring values are not consistent with a conclusion that the NESHAP caused the area to attain. Specifically, the commenter stated, ''All of the values for 2013–2015 are below 0.06 except in the last quarter, the value almost doubles to 0.11. This seems to indicate that something else was happening during all of the quarters except the last quarter. Was the Exides [sic] plant even operating at full capacity during all of the quarters except last quarter of 2015? If so, was the plant voluntarily operating in a manner to keep the ambient values low? By voluntarily, I mean operating in a manner not required by the NESHAP. Without an answer to these questions, EPA cannot conclude that the NESHAP caused the area to come into compliance.'' The commenter further stated that the 2016 monitoring data, with a three-month maximum high of 0.11 μg/m^3, ''once again establishes that something other than the NESHAP caused the 2013–2015 values to be so low. Furthermore, the fact that the First Max and Second Max on Monitor 3 was above the level of the NAAQS indicates that rather than the NESHAP causing attainment of the NAAQS, Indiana DEM just got lucky do [sic] to some random factor like meteorology or the plant is operating in a manner to make voluntary reductions to above [sic] violating the NAAQS. EPA should also review communications between IDEM and Exides [sic] to ensure that they are not working together to use voluntary measures to avoid the monitors' detecting NAAQS exceedances.''

EPA Response: EPA does not agree that the single three-month average cited by the commenter indicates that the area's attainment of the NAAQS cannot be the result of permanent and enforceable measures. The 2013–2015 design value of 0.11 μg/m^3 meets the lead NAAQS of 0.15 μg/m^3. However, as the commenter pointed out, there appeared to be a sudden rise in the three-month average value at the end of 2015. An elevated air quality monitor value was recorded at the Muncie site on December 14, 2015. Exide Technologies told IDEM that on that date, errors occurring while replacing bags in the baghouse caused eight bags to fall off when the unit undertook its routine mechanical action to remove the sediment which had deposited on the bags. After the bags were properly reinstalled, subsequent monitor readings improved. EPA reiterates that Muncie's monitored design value for 2013–2015 (which represents the highest single three-month average concentration over the three-year period) was below the NAAQS of 0.15 μg/m^3. The December 2015 incident at Exide Technologies' baghouse did not cause or contribute to any violation of the 2008 lead NAAQS. EPA is satisfied that Exide Technologies' compliance with its lead SIP requirements, which include proper operation of control technologies, will ensure that monitored air quality in Muncie will remain below the 2008 lead NAAQS.

The commenter was concerned that EPA could be overlooking an upward emissions trend after concentrations appeared to rise at the end of 2015. More monitoring data for Muncie has become available since EPA's proposal. See Table 1. Considering only the data through 2015, it might appear that the lead emissions in Muncie had been low but suddenly climbed at the end of 2015. However, EPA believes that the three-month average concentration of 0.11 μg/m^3 for October–December 2015 did not demonstrate a return to routinely high emissions that could lead to violations of the 2008 lead NAAQS, nor does it call into question EPA's conclusion that the permanent and enforceable measures on the facilities at issue are the cause of the area's attainment of the standard. The alleged baghouse incident in December 2015 apparently resulted in a monthly average concentration of 0.2519 μg/m^3. Although the monthly monitored lead concentrations for the months surrounding December 2015 were much lower, the three consecutive three-month lead averages which included December 2015 were calculated to be at or near 0.11 μg/m^3. The surrounding single-month values were 0.0505 μg/m^3 (October 2015) and 0.0347 μg/m^3 (November 2015), and 0.0319 μg/m^3 (January 2016) and 0.0233 μg/m^3 (February 2016). The subsequent three-month averages after the December 2015–February 2016 period were all much lower than 0.11 μg/m^3. Because the form of the 2008 lead NAAQS uses the maximum three-month average value over three years as the design value, the design values for 2013–2015, 2014–2016, and 2016–2018 were all 0.11 μg/m^3, since those three-year averaging periods all included the three-month average of 0.11 μg/m^3 for October–December 2015 and/or November 2015-January 2016.

The monitoring data demonstrate an overall pattern that strongly supports a redesignation to attainment. The Muncie lead three-month average concentrations have typically ranged from 0.01 μg/m^3 to 0.06 μg/m^3 from June–August 2012 through the present. The only higher three-month averages were the October–December 2015 three-month average value cited by the commenter, and the two three-month average values following it, but these have been shown to be caused by a single month's short-lived emission increase. As shown in Table 1, the remaining 74 certified three-month average values since June–August 2012 have been no higher than 0.06 μg/m^3. Considering preliminary monitoring data for 2019, the maximum three-month average lead concentration value from 2017–2019 (specifically, beginning with the three-month average for November 2016 to January 2017 and continuing through October–December of 2019) appears likely to be as low as 0.04 μg/m^3. EPA is satisfied that the Muncie lead monitoring data suggest that the December 2015 incident does not represent a return to pre-2012 ambient lead concentrations. Instead, the data indicate that the area is attaining the 2008 lead NAAQS.

The commenter speculates that the Muncie area's monitored attainment may be due to the Exide facility's voluntary operation in a manner that reduces emissions, and that absent proof that the facility is not voluntarily curtailing emissions, EPA cannot conclude that the NESHAP is the cause of the area's compliance. The commenter also suggests that EPA should review all communications between IDEM and Exide Technologies in order to ensure there is no collusion to use voluntary curtailment of emissions to meet the NAAQS. Per EPA's longstanding guidance regarding redesignations to attainment, EPA interprets CAA section 107(d)(3)(E)(iii) to require a showing that the state must be able to ''reasonably attribute'' the improvement in air quality to emission reductions which are permanent and enforceable. Memorandum from John Calcagni, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' (Sept. 4, 1992) (''Calcagni Memo''), at 4. The record demonstrates that the State has done so here. In its

redesignation request and maintenance plan submission, Indiana modeled projected ambient lead concentrations for the Muncie area using *allowable* emission limits at the single source of lead in the area, Exide Technologies. See [Maintenance Plan at 21–22]. Given the State's technical demonstration that the area would continue to attain the 2008 lead NAAQS if the source at issue were to emit at allowable levels, there is no record support for commenter's speculation that Muncie's attainment is due to Exide's voluntary curtailment of emissions (*i.e.,* actual emissions that are below the level that would be permitted under the emission limits), rather than the permanent and enforceable limits for Exide Technologies and the NESHAP cited by Indiana. EPA does not agree that given the record evidence, it must prove the negative—that the area's attainment was *not* caused by the emission limits imposed here. There is a single source in the Muncie area, emission limits were imposed on that source, those limits correlate with a measured and sustained drop in ambient lead concentrations (excepting expected short-term variability), and the State has provided additional modeling showing that even if emissions were to go up to permitted levels, the area would still maintain the NAAQS. We therefore disagree that it is necessary to review communications between Indiana and Exide Technologies before we may draw the conclusion that CAA section 107(d)(3)(E)(iii) has been satisfied.

The comment also cited the first and second maximum values of Monitor 3 as evidence that something other than the NESHAP caused the area's attainment of the NAAQS. The May 30, 2017 direct final/proposed action did not publish or discuss first and second maximum monitored values. The commenter did not provide the monitor data reports which formed the basis of these comments, but if the commenter's data source reports were similar to those found in EPA's air quality data website's Monitor Values Report (*https://www.epa.gov/outdoor-air-quality-data*), then EPA notes that the Monitor Values Reports for lead for the individual calendar years do show the first through fourth maximum data points. These are the four highest single-day monitored values at the site. These overall maximum daily values are not intended to be directly compared to the NAAQS. Compliance with the 2008 lead NAAQS is not determined by whether an area's daily maximum concentrations exceed the level of the NAAQS, but rather by whether an area's design value meets the NAAQS. For the 2008 lead NAAQS, the design value for an air quality monitor is defined as the maximum three-month mean concentration at that monitor over three years. See 40 CFR 50.16. An area's design value is based on the monitor in the area which records the highest design value over the three-year period. Muncie has one regulatory air quality monitor for lead, the Mt. Pleasant Boulevard monitor, 18–035–0009. An area attains the 2008 lead NAAQS if the area's design value is equal to or below 0.15 $\mu g/m^3$. The ''first max'' and ''second max'' cited by the commenter do not indicate that the Muncie area is violating the 2008 lead NAAQS. A more relevant value for NAAQS comparison, which can be found in the Monitor Values Report, is the maximum three-month average value for the year reported. The maximum three-month average value at Muncie has been below the level of the NAAQS since 2013.

As for the elevated single-day monitored values cited by the commenter, EPA notes that short-term ambient levels of lead can be affected by short-term variations in lead emissions from industrial sources, or local meteorological conditions that can affect the entrainment of nearby lead-bearing dust or the strength or direction of the dispersion of industrial lead emissions in the atmosphere. The State's modeled attainment demonstration also accounts for the variety of meteorological conditions which can occur in the Muncie area, and the analysis has shown that at allowable emissions, the Muncie area will meet the 2008 lead NAAQS. EPA does not find that the occurrence of occasional elevated daily monitored values, which do not result in three-month averages above the 2008 lead NAAQS, indicate that this area should not be redesignated.

Regarding the comment that random outside factors such as weather may have played a role in the reduced ambient concentrations evident at the monitor in recent years, the monitoring data do not appear to support that conclusion. The monitor has been in the same location for more than ten years and has measured ambient lead concentrations both above and below the NAAQS during that interval. The pattern of ambient monitored levels of lead at the Muncie monitor since 2012 shows a distinct drop below the 2008 lead NAAQS, and then remains generally steady at or near that low level. Three-month ambient lead levels are not as sensitive to weather conditions as pollutants formed in the atmosphere such as ozone. Wind variations or weather events may affect the strength or direction of local dispersion of lead emissions, or the uptake of windblown surface sediments, but these effects would be short-lived and variable. The historical pattern of monitored levels at Muncie is more indicative of emission reductions taking effect while daily variation continues to occur as expected. The monthly and three-month average monitored values have been less variable in recent years than before 2013, which does not seem to indicate that favorable weather conditions have reduced monitored values more than recent emission reductions have done.

Comment: EPA should also review data from monitors 1 and 2 at the Muncie monitoring location. Even if these monitors' data cannot be used for criterion 1, they can be used to evaluate the other criteria.

EPA Response: There is one lead monitor in Muncie (18–035–0009) that is used for comparison to the lead NAAQS. It is located at 2601 W Mt. Pleasant Boulevard. There is another monitor collocated with monitor 18–035–0009, but it is only used to fill in missing data at the main monitor. A third Muncie monitor, known as Exide East (18–035–0008), is an industrial site monitor owned and operated by Exide Technologies and is not used for regulatory purposes. EPA has reviewed the data from all three monitors. Although the data from the Exide East monitor and the Mt. Pleasant Boulevard collocated monitor are not directly used for NAAQS evaluation, EPA notes that for 2013 through 2018, the Exide East lead monitor and the collocated monitor show three-month average values and three-year design values of similar magnitude to those of the Mt. Pleasant Boulevard reporting monitor. Neither monitor reported three-month average values in that period which would exceed the NAAQS.

Comment: The commenter stated that in order to meet criterion 3 as well as criterion 4, EPA must model the ambient levels of lead in all ambient air locations using the maximum allowable emissions under the NESHAP. The commenter suggested that it is extremely likely that such modeling will show violations of the NAAQS and thus require EPA to disapprove the redesignation request and maintenance plan.

EPA Response: The May 30, 2017 action cited Indiana's modeling analysis, included in the docket at EPA–R05–OAR–2016–0137, which demonstrated that the maximum allowable federally enforceable emission limits for Exide Technologies

will provide for attainment of the NAAQS.

Comment: The commenter stated that as to redesignation criteria 1, 3, and 5, EPA has determined that the Indiana SIP is defective because it allows emissions above emission limits during malfunctions even if those emissions cause violations of a NAAQS. In support of this proposition, the commenter cites the final notice for the SSM SIP Call at 80 FR 33840, 33966 (June 12, 2015). The commenter asserts that, accordingly, EPA ''cannot approve this redesignation until Indiana or EPA removes 326 Ind. Admin. Code 1–6–4(a) from the Indiana SIP.''

EPA Response: Criteria 1, 3, and 5, cited by the commenter, appear to refer to CAA sections 107(d)(3)(E)(i), (iii), and (v). The commenter also cites EPA's June 12, 2015 SSM SIP Call concerning how provisions in SIPs treat excess emissions during periods of SSM (80 FR 33840). As the commenter stated, the Indiana SIP rule identified in the SIP Call is 326 IAC 1–6–4(a), approved by EPA in 1984. That rule, however, applies only to non-major sources whose potential emissions are so small that their sole permitting requirement is either a registration permit or minor source permit under 326 IAC 2–1–1 or 326 IAC 2–1–4, respectively. It does not apply to Exide Technologies, the source that Indiana identified as the only contributor to ambient lead concentrations in Muncie. Exide Technologies has a major source operating permit issued by IDEM pursuant to rules approved by EPA under title V of the CAA and 40 CFR part 70. Exide Technologies' part 70 permit states at section B.11(d) that Exide Technologies' permit conditions supersede 326 IAC 1–6.

With respect to commenter's specific allegations regarding the redesignation criteria, we do not agree that the SSM provision at issue in 326 IAC 1–6–4(a) calls into question EPA's finding that the area has attained the NAAQS. The air quality monitoring data clearly show that the area is attaining the NAAQS, and the status of the SSM SIP Call does not alter those factual circumstances. We also disagree that the SSM provision impacts EPA's conclusion that CAA section 107(d)(3)(E)(iii) is satisfied. The permanent and enforceable lead emission reductions at Exide Technologies, which were demonstrated to provide for attainment in Muncie, would not be affected in any way by 326 IAC 1–6–4(a), which plainly does not apply to the single, relevant source. Finally, EPA believes that the SSM provision cited by the commenter is not relevant to the inquiry of whether Indiana has complied with CAA section 107(d)(3)(E)(v), which requires Indiana to have ''met all requirements applicable to the area under section 110 of this title and part D of this subchapter.'' Not every requirement in the CAA is ''applicable'' for purposes of determining whether a nonattainment area may be redesignated, per CAA section 107(d)(3)(E)(v). The provision at issue here does not apply to any lead sources in the Muncie area, and is not ''applicable'' for purposes of evaluating Muncie's request for redesignation.

III. What action is EPA taking?

EPA is redesignating the Muncie lead nonattainment area to attainment of the 2008 lead NAAQS. The Muncie lead nonattainment area in Delaware County, Indiana, consists of a portion of the City of Muncie, Indiana, bounded to the north by West 26th Street/Hines Road, to the east by Cowan Road, to the south by West Fuson Road, and to the west by a line running south from the eastern edge of Victory Temple's driveway to South Hoyt Avenue and then along South Hoyt Avenue. EPA is also approving Indiana's lead maintenance plan for the Muncie area and the 2013 lead attainment year emission inventory for Muncie.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule relieves the State of planning requirements for this lead nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of the geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of lead NAAQS in tribal lands.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 20, 2020.

Kurt Thiede,

Regional Administrator.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.770, the table in paragraph (e) is amended by adding entries for ''Muncie 2008 lead emissions inventory'' and ''Muncie 2008 lead maintenance plan'' following the entry for ''Muncie Hydrocarbon Control Strategy'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* * *	*	* *	*
Muncie 2008 lead emissions inventory	4/14/2016	5/15/2020, [insert **Federal Register** citation].	
Muncie 2008 lead maintenance plan	4/14/2016	5/15/2020, [insert **Federal Register** citation].	
* * *	*	* *	*

■ 3. Section 52.797 is amended by adding paragraphs (f) and (g) to read as follows:

§ 52.797 Control strategy: Lead.

* * * * *

(f) Approval—Indiana's 2008 lead emissions inventory for the Muncie area, as submitted on April 14, 2016, satisfying the emission inventory requirements of section 172(c)(3) of the Clean Air Act for the Muncie area.

(g) Approval — The 2008 lead maintenance plan for the Muncie, Indiana nonattainment area has been approved as submitted on April 14, 2016.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 5. Section 81.315 is amended by revising the entry for Muncie, IN in the table entitled ''Indiana—2008 Lead NAAQS'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—2008 LEAD NAAQS

Designated area	Designation for the 2008 NAAQS [a]	
	Date [1]	Type
Muncie, IN		
Delaware County (part)	May 15, 2020	Attainment.
A portion of the City of Muncie, Indiana bounded to the north by West 26th Street/Hines Road, to the east by Cowan Road, to the south by West Fuson Road, and to the west by a line running south from the eastern edge of Victory Temple's driveway to South Hoyt Avenue and then along South Hoyt Avenue.		
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011, unless otherwise noted.

[FR Doc. 2020–08874 Filed 5–14–20; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0387; FRL–10007–38]

Acequinocyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of acequinocyl in or on the bushberry subgroup 13–07B. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 15, 2020. Objections and requests for hearings must be received on or before July 14, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0387, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0387 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 14, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0387, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 30, 2019 (84 FR 45702) (FRL–9998–15),