ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN83–1a; FRL–5882–6]

Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is approving a redesignation request submitted by the State of Indiana on April 8, 1993. Supplemental information was provided on June 17, 1997. In this submittal, Indiana requested that a portion of Vermillion County be redesignated to attainment of the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerometric mean diameter less than 10 micrometers (PM–10). Subsequent to this approval, the portion of Clinton Township, Vermillion County which includes sections 15, 16, 21, 22, 27, 28, 33 and 34 will be designated attainment for the PM–10 NAAQS.

DATES: The ''direct final'' is effective on October 27, 1997, unless EPA receives written adverse or critical comments by September 25, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Ryan Bahr, Environmental Engineer, at (312) 353–4366 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ryan Bahr, Environmental Engineer, at (312) 353–4366.

SUPPLEMENTARY INFORMATION:

I. Background

Each NAAQS consists of two standards: a primary standard for the protection of public health and a secondary standard for the protection of public welfare. The PM–10 NAAQS primary and secondary standard are set at the same level. To reflect the scientifically demonstrated relationship to health effects, this NAAQS level is composed of two averaging times; a 24-hour concentration set at a level of 150 micrograms per cubic meter ($\mu g/m^3$) and an annual average based on a 50 $\mu g/m^3$ annual arithmetic mean (See 40 CFR 50.6).

In 1988, several exceedances of the PM–10 NAAQS were recorded in Vermillion County at monitoring sites located downwind of Peabody Coal Company's Universal Mine, Blanford East Area. As a result of these exceedances, and pursuant to section 107(d)(A)(B) of the Clean Air Act (Act), a portion of Clinton Township in Vermillion County was designated moderate nonattainment for PM–10 on November 6, 1991 (56 FR 56694).

In order to satisfy the requirements of part D and section 110 of the Act for the nonattainment area, Indiana submitted a PM State Implementation Plan (SIP) revision request to EPA on April 8, 1993. Along with the PM SIP revision request for Vermillion County, Indiana submitted a request for redesignation to attainment of the PM–10 NAAQS for a portion of the county. EPA found the request complete and issued a completeness letter on April 30, 1993. The EPA approved Indiana's PM SIP submission for Vermillion County on February 15, 1994 (59 FR 7223). Indiana supplemented the redesignation request submittal with updated monitoring data on June 17, 1997. There have been no monitored violations of the PM–10 standard in Vermillion County since the original violations recorded in 1988.

On July 18, 1997, EPA promulgated new NAAQS for particulate matter. This revision to the NAAQS added standards for particulate matter with aerometric mean diameter less than 10 micrometers and changed the form of the 24 hour PM–10 standard.

II. Evaluation Criteria

Section 107(d)(3)(D) of the Act, as amended in 1990, authorizes the Governor of a State to request the redesignation of an area from nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act. An area can be redesignated to attainment if the following conditions are met:

(1) The area has attained the applicable NAAQS;

(2) The area has a fully approved SIP under section 110(k) of the Act;

(3) The EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions;

(4) EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Act; and,

(5) The State has met all requirements applicable to the area under section 110 and part D of the Act.

III. Summary of State Submittal

The following paragraphs discuss how the State's redesignation request for Vermillion County addresses the Act's requirements.

A. Demonstrated Attainment of the NAAQS

As explained in a September 4, 1992, memorandum ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from the Director of the Air Quality Management Division to the Regional Air Directors, three complete consecutive years of data showing PM–10 NAAQS attainment are required for redesignation. A violation of the NAAQS occurs when the number of exceedances per year, according to 40 CFR 50.6, is greater than 1.0. The July 18, 1997, promulgation retained the exceedance form for the annual standard but revised the 24 hour standard form. The 24 hour standard form was revised such that a violation occurs when the 98th percentile concentration is greater than the concentration limit of 150 $\mu g/m^3$. Indiana's April 8, 1993, submittal and June 17, 1997, supplement cite ambient monitoring data showing that Vermillion County has met the NAAQS for the years 1994–1996, which were the three most recent consecutive years with quality-assured monitoring data. Previous monitoring data for the period of 1989 through 1993 indicates that the NAAQS has been met continuously since the exceedances which occurred in 1988.

As shown in the table below, there have been no exceedances of the PM–10 NAAQS at any monitor in Vermillion County since 1988. It can be seen that the annual average PM–10 concentration has decreased significantly from 45 micrograms per cubic meter ($\mu g/m^3$) in 1988 to 19 $\mu g/m^3$ in 1996 (the NAAQS is 50 $\mu g/m^3$).

The table presented below summarizes the Vermillion County monitoring data submitted by Indiana in support of its redesignation request. The NAAQS for PM–10 is based on an annual average of 50 $\mu g/m^3$ and a 24 hour concentration (1st High) of 150 $\mu g/m^3$.

Year	Vermillion county monitor readings (μg/m 3)				
	Annual average	1st high	2nd high	3rd high	4th high
1988	45	202	180	120	119
1989	37	136	115	95	90
1990	36	110	108	103	103
1991	33	132	100	97	95
1992	29	84	81	66	66
1993*	22	67	57	50	46
1994	23	61	57	46	45
1995	24	64	63	58	55
1996	19	57	44	43	42

*1993 data was not submitted from the State but was obtained from AIRS to complete the chart.

The monitored 24 hour PM–10 concentrations have also decreased greatly in the last 5 years. The highest monitored concentration in 1988 was 202 μg/m^3 compared to 57 in 1996 (the NAAQS is 150 μg/m^3). The most significant improvement is seen between the years 1991 and 1992 when mining operations in the nonattainment area ceased. No additional PM–10 exceedances have been recorded since 1988 in the Aerometric Information and Retrieval System (AIRS) database through 1996.

According to the PM–10 standard promulgated July 18, 1997, in order to redesignate for PM–10, the 98th percentile of monitored readings needs to fall below the 24 hour concentration of 150 μg/m^3. As the maximum concentrations are below this level, it is evident that the 98th percentile concentration is below the limit and the air quality data meets this test and shows that Vermillion County meets the PM–10 NAAQS.

Dispersion modeling is commonly used to demonstrate attainment of the PM–10 NAAQS. The SIP was fully implemented and approved on February 15, 1994 (59 FR 7223). In the SIP, Indiana demonstrated that the one PM–10 source had closed and the operating permit had been withdrawn. Due to the absence of sources, EPA did not require Indiana to submit dispersion modeling with its redesignation request for Vermillion County. The State has continued to operate a PM–10 monitor in Vermillion County and there have been no NAAQS exceedances since 1988.

B. Fully Approved SIP

The SIP for the area must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply to the area. EPA's guidance for implementing section 110 of the Act is discussed in the *General Preamble to Title I* (57 FR 13498, April 16, 1992). The PM–10 SIP for Vermillion County met the requirements of section 110 of the Act and was approved by EPA on February 15, 1994 (59 FR 7223). The SIP recognizes that the operating permit for the only source of PM–10 expired April 1, 1992, and commits to not renewing that permit. With the closure of this source, there are no permitted or registered sources in Vermillion County. The SIP also committed to maintaining a monitor in Vermillion County until the area was redesignated.

C. Permanent and Enforceable Reductions in Emissions

Vermillion County's attainment of the PM–10 standards can be attributed to the closure of the Blanford Mining Area in early 1992. As specified in the SIP, the operation permit issued to Peabody Coal Company for the Blanford Mining Area expired April 1, 1992, and will not be renewed, making the closure a permanent and enforceable emission reduction. Following land reclamation which was completed by November 1, 1993, the entire area has been returned to being used exclusively for agricultural purposes. The Peabody Coal Company and any potential new industry that would like to operate in Vermillion County may not commence operating without the issuance of a new air permit by the State under the federally delegated Prevention of Significant Deterioration program. On February 15, 1994 (59 FR 7223), EPA approved the control strategies in Indiana's PM–10 SIP for this county, rendering them federally enforceable (56 FR 56694). The regulations are permanent, and any future revisions to the rules must be submitted to and approved by the EPA.

D. Fully Approved Maintenance Plan

Under section 107(d)(3)(E) and section 175A of the Act, the State must submit a maintenance plan in order for an area to be redesignated to attainment. The maintenance plan is intended to ensure that the area will maintain the attainment status it has achieved, and that if there is a violation, the plan will serve to bring the area back into attainment with prescribed measures. Indiana has committed to not reissue the permit for the Branford coal mining operation in Vermillion County, and the area has been reclaimed for use as farmland. The facility has been deleted from the State's emissions inventory, and there are no other permitted or registered PM–10 sources located in the Vermillion County nonattainment area. Subject new sources are required to meet Prevention of Significant Deterioration requirements which have been established to protect future air quality and ensure that a violation will not occur in the future.

The monitoring since the original exceedances has shown that from 1989 to 1996, there have been no exceedances in the area. The readings have shown, as expected, that the ambient levels of PM–10 in the area are at levels which are only an insignificant fraction of the NAAQS. Based on these facts, EPA has determined that Indiana's maintenance plan for Vermillion County satisfies the provisions of the Act.

E. Part D and Other Section 110 Requirements

EPA approved the PM–10 SIP for Vermillion County on February 15, 1994 (59 FR 7223), after having concluded that the plan satisfied the requirements of part D and section 110 of the Act. Several of the section 110 requirements were revised in the 1990 amendments to the Act. However, the existing SIP also conforms with the 1990 provisions of the Act. As required by part D of the Act, Indiana has a fully approved and implemented New Source Review Program. The existing Prevention of Significant Deterioration program, which was federally delegated for all attainment areas, will apply in all of Vermillion County subsequent to this approval.

Section 176 Conformity Requirements

Section 176 of the Act requires States to revise their SIPs to establish criteria

and procedures to ensure that individual Federal actions will conform to the overall air quality planning goals in the applicable State SIP. Section 176 further provides that the State's conformity revisions must be consistent with the Federal conformity regulations promulgated by EPA under the Act. The requirement used by Federal agencies to determine conformity is defined in 40 CFR part 93, subpart B (''general conformity'').

Indiana has adopted general and transportation conformity rules for PM–10 to satisfy provisions of part D. The State submitted a request for a SIP amendment regarding conformity on January 23, 1997.

The EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating redesignation requests under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Second, EPA's Federal conformity rules require a conformity analysis in the absence of federally approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment, and must implement conformity under Federal rules if State rules are not yet approved, the EPA believes it is reasonable to view these requirements as not being applicable requirements when evaluating a redesignation request. Consequently, the PM–10 redesignation request for Vermillion County may be approved notwithstanding the lack of fully approved conformity rules. Refer to EPA's action in the Tampa, Florida ozone redesignation finalized on December 7, 1995 (60 FR 62748).

IV. Final Rulemaking Action

EPA is approving the redesignation request and maintenance plan submitted by Indiana on April 8, 1993, and supplemented on June 17, 1997. EPA, therefore, is redesignating the portion of Clinton Township, Vermillion County which includes sections 15, 16, 21, 22, 27, 28, 33 and 34 to attainment for the PM–10 NAAQS. The remainder of Vermillion County will remain designated unclassifiable for the PM–10 NAAQS. The EPA has completed its analysis of this SIP revision request based on a review of the materials presented, and has determined that they are approvable.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should written adverse or critical comments be filed. This action will be effective October 27, 1997 unless, by September 25, 1997, written adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 27, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410 (a)(2).

Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under section 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Controller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Dated: August 14, 1997.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.776 is amended by adding paragraph (q) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(q) Approval—On April 8, 1993, and supplemented on June 17, 1997, the State of Indiana submitted a maintenance plan and a request that sections 15, 16, 21, 22, 27, 28, 33 and 34 of Clinton Township in Vermillion County be redesignated to attainment of the National Ambient Air Quality Standard for particulate matter. The redesignation request and maintenance plan satisfy all applicable requirements of the Clean Air Act.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. In section 81.315, in the table entitled ''Indiana—PM–10,'' the entry for Vermillion County is amended to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* *	*	* *	*	*
Vermillion County Part of Clinton Township, including sections 15, 16, 21, 22, 27, 28, 33 and 34.	Oct. 27, 1997	Attainment.		
* *	*	* *	*	*

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[FR Doc. 97–22667 Filed 8–25–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 97–266]

Compensation of Costs of Mitigating Cuban Interference

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order removes the Commission's rules implementing Section 7 of the Radio Broadcasting to Cuba Act: Compensation of Costs of Mitigating Cuban Interference because the funding for this activity was only authorized for a four year period from the date of the first Radio Marti program broadcast, May 20, 1985. Congress has made no further appropriations for this activity.

EFFECTIVE DATE: August 26, 1997.

FOR FURTHER INFORMATION CONTACT: Ana Janckson-Curtis, Compliance and Information Bureau, (202) 418–1160.

SUPPLEMENTARY INFORMATION: Adopted: July 28, 1997. Released: August 4, 1997.

1. This Order removes the provisions listed in Subpart M of Part 1 of the Commission's Rules, implementing section 7 of the Radio Broadcasting to Cuba Act, Pub. L. 98–111, 97 Stat. 749 (1983). This subpart includes Sections 1.1701 through 1.1712 of the Commission's Rules 47 CFR 1.1701–1.1712.

2. The Radio Broadcasting to Cuba Act established a domestic radio broadcast service to Cuba. Because Congress expected the government of Cuba to retaliate for these broadcasts by interfering with or jamming U.S. broadcast stations, Congress also adopted Section 7 of the Radio Broadcasting to Cuba Act. This provision authorized the Federal Communications Commission (FCC) to determine levels of jamming and interference to U.S. radio broadcasting stations by Cuba through regular monitoring of the 1180 AM frequency. Under Section 7, the Commission became responsible for establishing interference measurement criteria to assist in settling compensation claims brought by U.S. radio broadcasting station licensees for costs incurred in mitigating the effects of jamming activities by the Government of Cuba.

3. To implement Section 7, the Commission adopted regulations setting forth the technical standards, requirements and procedures for affected broadcast stations to file a claim, and the standards and procedures to be used by the FCC staff to verify the level of interference received by the stations. Congress specifically stated in section 7(e), however, that ''[f]unds appropriated for implementation of this section shall be available for a period of no more than four years following the initial broadcast occurring as a result of the program described in this Act.'' [1]

4. The first Radio Marti broadcast occurred on May 20, 1985. Since then, Congress has made no further authorization or appropriation of funds for the Radio Marti compensation program. [2] In the circumstances, we

[1] The amount actually appropriated for ''facilities compensation'' was $3,500,000 in 1984, see S. Rep. 98–514, to accompany H.R. Bill 5712, 98th Cong. 2nd Sess. The Committee on Appropriations noted that it expected to be informed of the need for additional funds up to the $5,000,000 authorized.

[2] Indeed, in 1990, when Congress authorized the TV Marti station, Congress debated whether to fund a compensation program for broadcasters, and chose not to do so. Instead, Congress specified alternative means for resolving any interference problems that would result from the establishment of the TV Marti program. For example, a task force was established for dealing with interference complaints and the FCC was instructed to monitor and report objectionable interference to appropriate Congressional committees. See Conf. Rep. Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, 101 Cong. 1st Sess., Rep. 101–343. Congress also authorized the FCC to make technical changes

Continued