

(Authority: 38 U.S.C. 3676, 3680A)

[FR Doc. E8-330 Filed 1-14-08; 8:45 am]

BILLING CODE 8320-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2006-0276; FRL-8508-8]

### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Amendments to Lead Rules, Quemetco

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** On February 7, 2002, Indiana submitted revisions to its State Implementation Plan (SIP) for lead (Pb) as part of the State's incorporation of a Federal standard for secondary lead smelters. On October 3, 2006, and November 27, 2007, Indiana supplemented its request as it pertained to Quemetco, Incorporated (Quemetco), in Marion County. The requested SIP revision replaces the Pb emission limits for Quemetco with new, stringent limits. EPA has determined that the new limits will be protective of the Pb air quality standards, and is therefore approving them.

**DATES:** This direct final rule will be effective March 17, 2008, unless EPA receives adverse comments by February 14, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-0276, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).
3. *Fax*: (312)886-5824.
4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of

business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2006-0276. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy 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 legal holidays. We recommend that you telephone Mary Portanova, Environmental Engineer, at (312) 353-5954 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Mary Portanova, Environmental Engineer, Criteria Pollutant 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](mailto: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. Background: Pb SIP and NESHAP Rules
- II. What are the new limits for secondary lead smelters?
- III. How does removing Quemetco from Article 15 affect the Pb SIP?
- IV. Demonstration of Pb NAAQS Attainment
- V. What action is EPA taking?
- VI. Statutory and Executive Order Reviews

#### I. Background: Pb SIP and NESHAP Rules

Indiana's SIP rules for Pb are currently codified at 326 Indiana Administrative Code (IAC) 15, which is also referred to as Article 15. Article 15 covers lead-bearing emissions and fugitive dust from several facilities in Indiana, including secondary lead smelters. The SIP rules applicable to sources in Marion County, Indiana, were developed to ensure that Marion County would attain and maintain the Pb National Ambient Air Quality Standards (NAAQS).

EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for secondary lead smelting on June 23, 1995 (60 FR 32587); amended on June 13, 1997 (62 FR 32209). Codified at 40 CFR part 63, subpart X, this NESHAP is a technology-based regulation intended to bring certain sources at secondary lead smelters to a specified level of air pollution control. Indiana incorporated the Maximum Achievable Control Technology (MACT) standard of the secondary lead smelter NESHAP, with certain adjustments, in 326 IAC 20-13. On August 22, 2006 (71 FR 48923), EPA approved Indiana's request for delegation of authority to implement and enforce the NESHAP for secondary lead smelting through 326 IAC 20-13.

The Federal NESHAP in Subpart X is expected to result in air quality benefits where it affects secondary lead smelters which were previously unregulated or which were previously subject to less stringent controls. In Indiana, however, the existing Marion County Pb SIP limits were already more stringent than the NESHAP's limits. Indiana believed that the Federal secondary lead smelter NESHAP would not fully protect the Pb NAAQS in Marion County. Therefore, when Indiana adopted the NESHAP into 326 IAC 20-13, the State adjusted it to make the rule's emission limits at least

as stringent as the Marion County Pb SIP limits had been.

There are two secondary lead smelters in Marion County, Indiana, Quemetco and Refined Metals of Indianapolis (Refined Metals). Quemetco, located in Indianapolis, recycles lead-acid batteries and other lead-bearing materials. It is currently operating and is affected by both the Marion County Pb SIP and the NESHAP rules for secondary lead smelters. Indiana chose to remove the paragraph that addressed Quemetco from the Pb SIP at Article 15, so that the facility's Pb emission regulations would all reside in one State rule, 326 IAC 20-13. The Refined Metals facility has closed.

## II. What are the new limits for secondary lead smelters?

The emission limits for Quemetco in 326 IAC 20-13 differ from the last Federally approved Pb SIP limits in Article 15. The SIP previously approved by EPA contained Pb emission limits for specific processes and process fugitive emissions. Later, the Quemetco facility enclosed its Pb emission sources.

Indiana subsequently revised Quemetco's Pb rules to apply Pb emission limits on individual numbered vent stacks under the facility's new configuration. The Pb limits in 326 IAC 20-13, which were submitted to EPA on February 7, 2002, correspond to Quemetco's current stack configuration. In addition, the limits in 326 IAC 15-1-2(a)(8) were given in units of pounds per hour, but the numerical Pb emission limits for Quemetco in 326 IAC 20-13-2(a) are given in units of milligrams per dry standard cubic meter (mg/dscm) to match the Federal NESHAP's emission limit units.

The process source limits in 326 IAC 20-13-2(a) are 1.0 mg/dscm, compared to the corresponding NESHAP limits of 2.0 mg/dscm. This limit applies to Quemetco's Stacks 100 and 111. The process fugitive source limits are 0.5 mg/dscm, compared to the NESHAP limits of 2.0 mg/dscm, and the emission limits for stacks venting fugitive dust sources are also 0.5 mg/dscm, compared to the NESHAP limits of 2.0 mg/dscm. These limits apply to Quemetco's Stacks 101-109. Quemetco has already shown that it can meet these limits.

The regulation at 326 IAC 20-13-2(a) also requires the use of High Efficiency Particulate Air (HEPA) filters, as defined in 40 CFR 63.542, on process fugitive emissions and stacks venting fugitive dust sources. The Quemetco facility already uses HEPA filters on its baghouses.

Indiana's secondary lead smelter rules include a partial incorporation by

reference of 40 CFR part 63, subpart X, at 326 IAC 20-13-1(c). This specifies standards for process and fugitive sources at secondary lead smelters, test methods, fugitive dust control, standard operating procedures for baghouses, and monitoring and recordkeeping requirements. The regulation at 326 IAC 20-13-1(c) does not include certain portions of 40 CFR part 63, subpart X, which are already covered by other portions of 326 IAC 20-13. The numerical emission limits for process, fugitive, and process fugitive sources found in 40 CFR part 63, subpart X are not included in the incorporation because Indiana's rule replaces them with more stringent limits, as in 326 IAC 20-13-2(a), for Quemetco. Certain requirements for baghouse bag leak detection systems are also not included in 326 IAC 20-13-1(c). These requirements do not apply to Quemetco, which has HEPA filters and is therefore not required to have a bag leak detection system.

## III. How does removing Quemetco from Article 15 affect the Pb SIP?

Because 326 IAC 20-13 now contains Pb emission limits for Quemetco, Indiana chose to delete the portion of Article 15 that contains Pb emission limits for Quemetco under the Marion County SIP, rather than retain duplicate or conflicting emission limits. The final State rule removing 326 IAC 15-1-2(a)(8) was published in the Indiana Register on January 1, 2001 (24 *Ind. Reg.* 954).

Simply deleting Quemetco's limits from Article 15 would be an unacceptable relaxation of the Marion County Pb SIP, even though Quemetco's Pb air emissions are still regulated by the NESHAP at 326 IAC 20-13. State Pb SIP limits must be directly linked to local air quality effects. The levels of the Pb SIP limits in Article 15 have been shown, through dispersion modeling, to assure attainment and maintenance of the Pb NAAQS in Marion County. The SIP may not be subsequently relaxed without review and rulemaking action by EPA, to assure continued maintenance of the NAAQS. EPA can bring enforcement action against a facility based on noncompliance with the Federally approved SIP limits. The NESHAP sets emission control requirements for secondary lead smelters as a group. Its emission limits are based on nationally available emission control technology. The NESHAP can be changed as a broad national measure, without requiring an analysis of the effects on local air quality.

Therefore, in an October 3, 2006 letter, Indiana requested that portions of 326 IAC 20-13 be approved into the Marion County Pb SIP in place of 326 IAC 15-1-2(a)(8). This request was clarified in a second letter from Indiana to EPA dated November 27, 2007. Incorporating those provisions of 326 IAC 20-13 into the Marion County Pb SIP ensures that the Pb emission limits for Quemetco cannot be changed without proper State rulemaking procedures, a demonstration of attainment of the Pb NAAQS, and review and rulemaking action by EPA. The portions of Article 15 which Indiana requested as SIP revisions are 326 IAC 20-13-2(a) (Quemetco's emission limits and filter requirements); 326 IAC 20-13-1(c) (incorporation of 40 CFR part 63, subpart X); and 326 IAC 20-13-6 (compliance testing).

## IV. Demonstration of Pb NAAQS Attainment

The State performed dispersion modeling in 2005 using the ISCST3 model to demonstrate that the new limits would protect the Pb NAAQS in Marion County. ISCST3 was the appropriate regulatory dispersion model at the time. The modeling used the regulatory default options and five years of surface meteorological data from the Indianapolis, Indiana airport, with upper-air meteorological data from Dayton, Ohio. Building dimensions were included to account for downwash effects. The State included both Quemetco's Pb emissions and the allowable Pb emissions for the Refined Metals secondary smelter under Article 15. The Refined Metals facility is currently not operating; but because Indiana has maintained the SIP rule addressing Refined Metals in Article 15, its allowable emissions must be included in the Marion County attainment demonstration. The model showed that the limits in 326 IAC 20-13 will maintain the Pb NAAQS of 1.5 micrograms per cubic meter, quarterly. The maximum modeled quarterly impact of the Marion County Pb sources was 0.16 micrograms per cubic meter. This value includes a background Pb concentration taken from locally monitored air quality data.

## V. What action is EPA taking?

EPA is approving Indiana's February 7, 2002, SIP revision request, as supplemented in a letter dated October 3, 2006, and another letter dated November 27, 2007. EPA is approving the removal of 326 IAC 15-1-2(a)(8) from the Indiana Pb SIP. EPA is also approving as part of the SIP: (1) Corresponding minor editorial changes

in two sections of 326 IAC 15–1 that refer to Quemetco; (2) the addition of 326 IAC 20–13–2(a); (3) the addition of 326 IAC 20–13–1(c); and (4) the addition of 326 IAC 20–13–6. This SIP revision retains emission limits adequate to protect the Pb NAAQS in Marion County, Indiana, and places the regulations affecting Indiana's active secondary lead smelters in one section of Indiana's pollution control regulations. It should be noted that this action in no way affects the continued enforceability of the Federal NESHAP at 40 CFR Part 63, Subpart X.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. The proposed rule will be effective March 17, 2008 without further notice unless we receive relevant adverse written comments by February 14, 2008. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective March 17, 2008.

## VI. Statutory and Executive Order Reviews

### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and, therefore, is not subject to review by the Office of Management and Budget.

### *Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a “significant regulatory action” under Executive Order 12866 or a “significant energy action,” this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

### *Regulatory Flexibility Act*

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

### *Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA).

### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

### *National Technology Transfer Advancement Act*

In reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

### *Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *Congressional Review Act*

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 rule 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 March 17, 2008. 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. (See section 307(b)(2).)

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: December 7, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, part 52, chapter I, of 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, *et seq.*

### Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(183) to read as follows:

#### § 52.770 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(183) On February 7, 2002, Indiana submitted revisions to its State Implementation Plan (SIP) for lead (Pb) as part of the State's incorporation of a Federal standard for secondary lead smelters. On October 3, 2006, and November 27, 2007, Indiana supplemented its request as it pertained to Quemetco, Incorporated, in Marion County. This revision removes from the Indiana SIP the source-specific provisions for Quemetco found in article 326 IAC 15, previously approved in paragraph (c)(95) of this section, and replaces them with the corresponding provisions of article 326 IAC 20–13.

(i) *Incorporation by reference.* The following sections of Title 326 of the Indiana Administrative Code (IAC) are incorporated by reference:

(A) 326 IAC 15–1–2(c) “Source-specific provisions” and 326 IAC 15–1–3 “Control of fugitive lead dust”. Filed with the Secretary of State on December 1, 2000, effective December 30, 2000. Published in the Indiana Register on January 1, 2001 (24 IR 954).

(B) 326 IAC 20–13–1(c) “Applicability; incorporation by reference of federal standards”, 326 IAC 20–13–2(a) “Emission limitations lead standards for Quemetco, Incorporated”, and 326 IAC 20–13–6 “Compliance testing”. Filed with the Secretary of State on December 1, 2000, effective December 30, 2000. Published in the Indiana Register on January 1, 2001 (24 IR 958).

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[FR Doc. E8–440 Filed 1–14–08; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 410, 414, 424, and 484

[CMS–1385–F3]

RIN 0938–AO65

#### Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, and Other Part B Payment Policies for CY 2008; Revisions to the Payment Policies of Ambulance Services Under the Ambulance Fee Schedule for CY 2008; and the Amendment of the E-Prescribing Exemption for Computer-Generated Facsimile Transmissions; Correcting Amendment

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correcting amendment.

**SUMMARY:** This correcting amendment corrects several technical and typographical errors in the regulations text of the final rule with comment period that appeared in the November 27, 2007 *Federal Register* (72 FR 66222). The final rule with comment period addressed performance standards for diagnostic testing facilities and standards and requirements related to therapy services under Medicare Parts A and B.

**DATES:** *Effective Date:* This correcting amendment is effective January 15, 2008.

**FOR FURTHER INFORMATION CONTACT:** Diane Milstead, (410) 786–3355.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In FR Doc. 07–5506 of November 27, 2007 (72 FR 66222) (hereinafter referred to as the CY 2008 PFS final rule with comment period), there were a number of technical and typographical errors that are identified and corrected in regulation text of this correcting amendment. The provisions of this correcting amendment are effective January 15, 2008.

##### II. Summary of Errors in the Regulation Text

1. On page 66398, 3rd column, 8th full paragraph, line 3, the phrase “IDTF does not include the following” is corrected to read “IDTF is prohibited from the following.”

2. On page 66401,  
a. First column, 1st full paragraph, line 1, the phrase “(1) The services” is corrected to read “(1) For services.”

b. Third column, last partial paragraph, line 4, the phrase “members of public may comment” is corrected to read “members of the public may comment.”

3. On page 66402, 1st column, 5th full paragraph, line 4, the phrase “members of public may comment” is corrected to read “members of the public may comment.”

4. On page 66406, 2nd column, 1st full paragraph, line 1, the phrase “(2) The requested information” is corrected to read “(2) The required information”.

5. On page 66407,

a. First column,  
(1) The 8th paragraph “(e) If educated outside the United States—” is corrected to read “(e) If educated outside the United States, must meet all of the following:”

(2) The 9th paragraph “(1) Must meet both of the following:” is deleted.

(3) Tenth paragraph,

(a) Line 1, the phrase “(i) Graduated” is corrected to read “(1) Graduated”.

(b) Lines 4 and 5, the phrase “occupational therapy assistant entry level education” is corrected to read “occupational therapy entry-level education”.

(4) Eleventh paragraph, line 1, the phrase “(A) The Accreditation” is corrected to read “(i) The Accreditation”.

(5) Twelfth paragraph, line 1, the phrase “(B) Successor” is corrected to read “(ii) Successor”.

(6) Thirteenth paragraph, line 1, the phrase “(C) The World” is corrected to read “(iii) The World”.

(7) Fourteenth paragraph, line 1, the phrase “(D) A credentialing body” is corrected to read “(iv) A credentialing body”.

(8) Fifteenth paragraph, line 1, the phrase “(ii) Successfully completed” is corrected to read “(2) Successfully completed”.

(9) Sixteenth paragraph, line 1, the phrase “(2) On or before December 31, 2009” is corrected to read “(3) Effective January 1, 2010”.

(10) The last full paragraph, “(1) Is licensed or otherwise regulated, if applicable, as an occupational therapy assistant by the State in which practicing, unless licensure does not apply.” is corrected to read “(1) Is licensed, unless licensure does not apply, or otherwise regulated, if applicable, as an occupational therapy assistant by the State in which practicing.”

b. Third column,

(1) The 2nd full paragraph, “(a)(1) Graduated after successful completion of one of a physical therapist education program approved by one of the