

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[IN122-3; FRL-7235-2]

### Approval and Promulgation of Implementation Plans; Indiana

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

**ACTION:** Final rule.

**SUMMARY:** The Indiana Department of Environmental Management (IDEM) submitted a revised opacity rule to the EPA on October 21, 1999, as a requested revision to its State Implementation Plan (SIP). The revisions amend portions of Indiana's opacity rule concerning the start-up and shutdown of utility boilers, terminology used in discussing averaging periods, time periods for temporary exemptions, alternative opacity limits, and conflicts between visible emission readings and continuous opacity monitor (COM) data. The proposed rule and direct final rule were published in the November 30, 2001 **Federal Register**. After EPA received adverse comments, a direct final rule withdrawal was published on January 28, 2002. In this action, the EPA responds to the adverse comments and takes final action approving Indiana's SIP revision request.

**DATES:** This rule is effective on August 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886-6524.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" are used we mean the EPA.

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##### I. What Is EPA Approving?

EPA is approving revisions to Indiana's opacity rule. IDEM submitted the revised opacity regulation to the EPA on October 21, 1999, as a requested revision to its SIP. The revisions address applicable requirements concerning the start-up and shutdown of utility boilers, the terminology used in discussing averaging periods, time periods for temporary exemptions, alternative opacity limits (AOLs), and conflicts between visible emission readings and COM data. The boiler start-up and shutdown revisions satisfy the Clean Air Act requirements and the EPA policy on such provisions. Other rule revisions aid the enforcement of the opacity rules.

##### II. What Are the Changes From the Current Rules?

The State's submission revises several sections of Indiana's opacity rule, 326 IAC Article 5. The revisions involve limited exemptions from opacity limits during start-up and shutdown of utility boilers equipped with electrostatic precipitators (ESPs), conflicts between COM data and visible emission readings, clarification of averaging periods, temporary AOLs for non-boiler sources, and exemptions for sources with consolidated Title V permit limits.

###### A. Provisions for Utility Boilers

The major new component of these revisions allows certain utility boilers to obtain limited exemptions from opacity limits during start-up and shutdown periods in their federally enforceable operating permits. The exemption cannot be longer and will generally be shorter than an upper bound duration established in the rule, 326 IAC 5-1-3(e). This provision is for power plants using coal-fired boilers and ESPs.

###### B. Conflicts Between COM Data and Visual Opacity Readings

The current SIP version states that if there is a conflict between opacity readings recorded by a COM and those taken by a human observer, the COM data will prevail. EPA requested this rule be revised to make enforcement easier. Indiana revised the rule, 326 IAC 5-1-4(b), to state that data from either a COM or a human observer may be used to show a violation of opacity limits. The basis for this change is that there are certain instances in which opacity readings from an observer may be more accurate than those from a COM. For example, sulfur in a high-temperature gas stream exists in a gaseous state inside a smokestack and would not register on a COM. Once the

gas stream comes in contact with the atmosphere, however, chemical reactions and cooling occur, causing visible emissions which can be seen by an observer.

###### C. Clarification of Averaging Periods

The current version of this rule, 326 IAC 5-1-2, states that the limits are not to be exceeded "in 24 consecutive readings" with readings taken every 15 seconds. The revised rule states that the limits are not to be exceeded in "any one 6-minute averaging period." The limits themselves are unchanged. Indiana made a similar clarification of time averaging periods for temporary AOLs. Under 326 IAC 5-1-3(a) and (b), Indiana may provide temporary AOLs to certain sources for start-up, shutdown, and ash removal. Both of these revisions improve the ability to enforce the rule by making it clearer and more consistent with the opacity test method. The test method (40 CFR part 60, appendix A, Method 9) calls for opacity readings to be taken by an observer every 15 seconds, and for these readings to be averaged on a 6-minute basis.

###### D. Temporary Alternate Opacity Limitations for Non-Boiler Sources

New provisions in 326 IAC 5-1-3(c) authorize Indiana to grant temporary AOLs to non-boiler sources. These sources now may apply for a short-term opacity AOL for start-up, shutdown, and ash removal situations. IDEM will submit any temporary AOLs to the EPA as site-specific SIP revisions. EPA will review them for compliance with Clean Air Act requirements and EPA policy. This rule revision does not directly affect any SIP emissions limits.

###### E. Opacity Limit Exemptions for Title V Sources

Indiana's rule had provided an exemption from opacity limits for any source with a specific opacity limit in a Title V permit. The rule, 326 IAC 5-1-1, allowed sources to consolidate multiple limits into a single limit in the Title V permit. This is known as "streamlining." The EPA had informed Indiana that the exemption was inappropriate because it had impermissibly suggested that Title V permits could create SIP exemptions. As a result, Indiana removed the exemption from 326 IAC 5-1-1.

##### III. What Is EPA's Analysis of the Supporting Materials?

The EPA used its September 20, 1999, memorandum entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Start-up, and Shutdown" to evaluate the

exemptions provisions in 326 IAC 5-1-3(e). To be approved, the provisions must meet the seven requirements in this memorandum. The requirements are:

1. The revision must be limited to specific, narrowly-defined source categories using specific control strategies;
2. Use of the control strategy for this source category must be technically infeasible during start-up or shutdown periods;
3. The frequency and duration of operation in startup or shutdown mode must be minimized;
4. As part of its justification of the SIP revision, the state should analyze the potential worst-case emissions that could occur during start-up and shutdown;
5. All possible steps must be taken to minimize the impact of emissions during start-up and shutdown on ambient air quality;
6. At all times, the facility must be operated in a manner consistent with good practice for minimizing emissions; and
7. The owner or operator's actions during start-up and shutdown periods must be documented by properly signed, concurrent operating logs, or other relevant evidence.

Indiana has met all seven requirements. Language in Indiana's rules meets requirements three, five, six, and seven. An October 10, 2001, letter from IDEM states that the AOL will only be given to 22 power plants using coal-fired boilers with ESPs. This satisfies the first requirement. IDEM supplied technical documentation on the infeasibility of ESPs during start-up and shutdown to meet requirement two. Indiana provided modeling analysis of the potential worst case emissions to meet the fourth requirement, as discussed in section IV below.

In addition to the supporting material for the exemptions in 326 IAC 5-1-3(e), Indiana provided support for its other opacity revisions. Revised language in 326 IAC 5-1-2 clarifies the averaging period for opacity level readings. The averaging period is now "any one (1) six (6) minute averaging period." The former limit of "twenty-four (24) consecutive readings" (readings are taken every 15 seconds) was revised to aid enforcement of the opacity rules. Indiana also submitted revisions to 326 IAC 5-1-3 (a), and (b) which provide sources short-term temporary AOLs for start-up, shutdown, and ash blowing. An alternative 60 percent opacity limit section (a) will now apply for up to "two (2) six (6) minute averaging periods" in any twenty-four hour

period. Previously, the limit applied for "twelve (12) continuous minutes." Section (b) similarly changes a "six (6) continuous minutes" to "one (1) six (6) minute" averaging period. The 326 IAC 5-1-3 (a) and (b) revisions also aid rule enforcement.

Indiana also revised 326 IAC 5-1-3 (c) to include non-boiler sources located outside of Lake County with similar AOLs to those of 326 IAC 5-1-3 (a) and (b). Language in 326 IAC 5-1-1 allowing an opacity limits exemption for any source with a specific opacity limit in a Title V permit was removed. This exemption was removed because it had impermissibly suggested that Title V permits could create SIP exemptions.

Indiana held two public hearings on the opacity rule revisions, giving interested parties an opportunity to comment. It held the first public hearing on December 3, 1997 and the second on June 3, 1998. Transcripts of the public hearing are included in the submittal. Representatives from electric utilities, a university, and a cement company made comments at the hearings. These comments were generally supportive of the rule revisions except for two commenters who expressed concern about 326 IAC 5-1-4(b). This section addresses conflicts between visual opacity readings and those taken with a COM. Indiana further revised this section in response to the comments. Section 5-1-4(b) now states that either visual or COM readings may be used to support an enforcement action. The source may also use COM readings and other relevant information to refute the State's findings.

#### **IV. What Are the Environmental Effects of These Alternate Limits in 326 IAC 5-1-3?**

Indiana submitted a modeling analysis aimed at assessing the worst-case impact of the limited exemption from opacity limits in 326 IAC 5-1-3(e). This modeling analysis addresses the fourth requirement of EPA's September 20, 1999 policy. Of the 22 eligible facilities, IDEM modeled PSI Energy's power plant in Edwardsport because it has the shortest stacks (183 feet) and the most significant impact from building downwash. A conservative emissions rate was calculated by estimating uncontrolled emissions under full-load operating conditions for a conservative eight-hour start-up period. IDEM developed a conservative estimate of background concentrations in the area of the Edwardsport plant. It showed that application of this background value to the other relevant power plants (none of which are in the Lake County non-

attainment area) would provide a similar degree of conservatism.

Indiana used five years of meteorological data to model estimated concentrations of particles of nominal aerodynamic diameter of 10  $\mu\text{m}$  or less (PM-10). The Edwardsport modeling results show an ambient PM-10 concentration (including background) of 98.6  $\mu\text{g}/\text{m}^3$ , well below the 24-hour average PM-10 standard of 150  $\mu\text{g}/\text{m}^3$ . Thus, IDEM has demonstrated that the start-up and shutdown exemption in 326 IAC 5-1-3 is not expected to cause a violation of the PM-10 air quality standards.

The EPA further examined whether air quality problems could arise from multiple sources operating in start-up or shutdown mode simultaneously. With one exception, the relevant power plants are isolated from each other. The one exception is for two facilities in Warrick County. Because the two facilities are about 3 kilometers apart, and because these facilities have significantly higher stacks than the Edwardsport facility, EPA is satisfied that simultaneous operation in start-up or shutdown mode at these two facilities will not cause air quality problems. In addition, because operation in start-up or shutdown mode (particularly eight hours of such operation) is infrequent, simultaneous operation in these modes at more than one source is unlikely. Consequently, EPA believes that granting the exemption requested by Indiana will not jeopardize continued attainment of the air quality standards.

#### **V. What Are EPA's Responses to the Comments on This SIP Revision?**

The Indiana Electric Utility Air Work Group submitted a comment supporting the (visual versus monitor) opacity readings revision. EPA acknowledges this comment. EPA has also received ten comments on the proposed rulemaking for Indiana's opacity rule from a Wyoming citizen. The following summarizes the comments and gives the EPA's response:

*Comment 1:* EPA should not approve an exemption from Indiana's opacity limits because the limits are already quite lax. Sources located in non-attainment areas are subject to a 30 percent opacity limit (except for facilities located in Lake County which are subject to a 20 percent opacity limit), with an exemption allowed for a cumulative total of up to fifteen minutes in a 6-hour period during which opacity cannot exceed 60 percent, and sources elsewhere are subject to a 40 percent opacity limit.

*Response 1:* Although the commenter considers Indiana's opacity limits lax, in

fact Indiana has demonstrated to EPA that at least some of these sources cannot meet these limits during start-up and shutdown. The infeasibility of meeting the limits led Indiana to pursue an exemption from its normal opacity limits during these periods in accordance with EPA policy. First, the 30 percent opacity limit applies to areas that were previously designated non-attainment for total suspended particulate matter. Only Lake County is designated non-attainment for the current, PM-10 based, particulate matter standard.

More importantly, the interpretation of the 60 percent opacity rules as an "exemption" is incorrect. This comment refers to limits in 326 IAC 5-1-2(1)(B) and 326 IAC 5-1-2(2)(C) which state that opacity shall not exceed 60 percent for a cumulative total of 15 minutes in a 6-hour period. These 60 percent limits are in addition to the general 6-minute average opacity limits in 326 IAC 5-1-2 (40 percent, 30 percent, or 20 percent, depending on the location of the source), and are meant to prevent repeated, short-duration high-opacity emissions which may not last long enough to cause a violation of a 6-minute average opacity limit. There is no language in 326 IAC 5-1-2(1)(B) or (2)(C) which exempts sources from other applicable opacity limits. Therefore, it would be a violation of the rule if opacity were to exceed *either* the appropriate 6-minute average opacity limit or the 60 percent 15-minute cumulative limit.

*Comment 2:* While 326 IAC 5-1-3(d) does require the submittal of a source-specific SIP revision to the EPA for these alternative opacity exemptions, EPA's approval of the procedures for alternative opacity limits in 326 IAC 5-1-3(d) could be construed as a guaranteed approval of the SIP revision as long as the source and the State comply with the requirements of this State rule in crafting alternative opacity limits, especially considering that Indiana's rule does not require the source-specific SIP revision to be approved by EPA before the source can be exempt from SIP opacity requirements. Thus, this provision must not be approved as part of the SIP. Instead, the EPA should simply review and approve or disapprove, as appropriate, each source-specific SIP revision as submitted.

*Response 2:* We disagree with this interpretation of the State rule. EPA approval of 326 IAC 5-1-3(d) does not guarantee EPA approval of future SIP revisions requesting alternative opacity limits under this subsection. 326 IAC 5-1-3(d) merely lays out the conditions

and procedures under which Indiana would accept such revisions. If such a revision is approved by Indiana, the State must submit it to the EPA as a site-specific SIP revision. The EPA will review any such submittals on their own merits under Clean Air Act requirements and take appropriate action.

Alternative opacity limits under Section 326 IAC 5-1-3(d) do not become effective unless and until the EPA approves them as SIP revisions. 326 IAC 5-1-7 states that: "Exemptions given or provisions granted by the commissioner in accordance with section \* \* \* 3(d) \* \* \* of this rule shall be submitted to the U.S. EPA as a SIP revision and shall not become effective until approved as a SIP revision by the U.S. EPA."

*Comment 3:* EPA's proposed approval of these revisions is in violation of the requirements of the Clean Air Act and EPA's September 20, 1999 policy. First, it is apparent from the language of 326 IAC 5-1-3(e) that Indiana has been allowing, without EPA approval, exemptions from the SIP's opacity requirements in operating permits (state operating permits as well as Part 70 operating permits). Such exemptions are illegal, as operating permits cannot allow a source to violate the SIP and such permits cannot be used to revise a SIP unilaterally. The commenter urges EPA to investigate Indiana's implementation of its permitting program to determine if the state is allowing illegal revisions to other requirements of the SIP as well as the SIP opacity limits through the issuance of operating permits. In addition, EPA's approval of the provision without discussion of the underlying change in specific SIP requirements is clearly improper.

*Response 3:* The 22 facilities eligible for start-up/shutdown opacity limit exemptions under 326 IAC 5-1-3(e) currently have opacity limit exemptions in their State operating permits. However, since these State operating permits are not federally enforceable, they do not create SIP exemptions. Indiana cannot issue any Title V permits to these 22 facilities which contain start-up/shutdown exemptions until 326 IAC 5-1-3(e) is incorporated into the SIP by federal rulemaking action.

If EPA approves this provision, the State is bound by the provisions in 326 IAC 5-1-3(e) to establish limits which, among other things, "limit the duration and extent of excess emissions to the greatest degree practicable," and "minimize the duration and extent of excess emissions." Indiana has further indicated, in an October 10, 2001 letter,

that it understands that EPA approval of 326 IAC 5-1-3(e) will not make the pre-existing opacity exemptions in the State permits federally enforceable.

*Comment 4:* Indiana's proposed SIP revision does not comply with the requirements of EPA's September 20, 1999 policy. EPA's policy states that start-ups and shutdowns are part of the normal operation of a source and should be accounted for in the planning, design, and implementation of operating procedures for the process and control equipment. Thus, it is reasonable to expect that careful and prudent planning and design will eliminate violations of emissions limitations during such periods.

*Response 4:* The policy continues: "For some source categories, given the types of control technologies available, there may exist short periods of emissions during start-up and shutdown when, despite the best efforts regarding planning, design, and operating procedures, the otherwise applicable emissions limitation cannot be met." The policy also states, "it may be appropriate, in consultation with EPA, to create narrowly-tailored SIP revisions that take these technological limitations into account and state that the otherwise applicable emissions limitations do not apply during narrowly defined start-up and shutdown periods."

The start-up/shutdown exemptions in 326 IAC 5-1-3(e) only apply to coal-fired utility boilers equipped with electrostatic precipitators (ESPs). The rule also permits similar exemptions for boilers equipped with baghouses at sources with a preexisting permit with such an exemption. However, no boilers equipped with baghouses have such a permit, so no boilers with baghouses are eligible for the exemption. This is a specific source category with a certain type of control device that Indiana has determined is technically infeasible to operate in low temperature exhaust streams. Thus, approval of this SIP revision is appropriate under EPA policy.

*Comment 5:* EPA's policy does allow for narrowly-tailored exemptions from SIP limits for some source categories, "given the types of control technologies available," that cannot meet SIP limits despite best efforts regarding planning, design, and operating procedures. Regarding this SIP revision, Indiana has claimed those coal-fired utility boilers equipped with ESPs cannot meet the existing state opacity limits, which already are quite lenient and already allow greater levels of opacity during periods of start-up and shutdown. Although EPA has stated in its SIP approval that these exemptions only

apply to coal-fired boilers using ESPs, the State rule does not limit the exemption to coal-fired boilers, and it does not limit the exemption to facilities using only ESPs for control. In fact, the exemptions are even allowed for facilities equipped with baghouses and such facilities should have no problems meeting Indiana's lax opacity limits, unless such facilities are bypassing the control equipment or not maintaining and operating the source in accordance with good air pollution practices for minimizing emissions. Thus, the State's rule is not limited to specific, narrowly-defined source categories.

*Response 5:* 326 IAC 5-1-3(e) states that if a source has different start-up and shutdown conditions from those in subsections (a) or (b) in a valid operating permit on the effective date of this rule (November 8, 1998), the source will be eligible for the 5-1-3(e) start-up/shutdown exemption. In an October 10, 2001, letter, Indiana states that the only facilities having such permits as of November 8, 1998, are a group of 22 power plants using coal-fired boilers equipped with ESPs. Other sources, such as facilities equipped with baghouses, are not eligible for this exemption under the explicit language in 5-1-3(e). The EPA has determined that coal-fired utility boilers equipped with an electrostatic precipitator meet the policy requirement for a narrowly-defined source category.

*Comment 6:* Indiana did not provide any justification to show that the applicable opacity limits cannot be met for sources other than coal-fired boilers equipped with ESPs, nor did Indiana provide adequate justification to show that the existing opacity requirements could not be met, given the types of control technologies available, at coal-fired boilers equipped with ESPs. Further, the State did not adequately show that the use of ESPs during start-up and shutdown was technically infeasible.

*Response 6:* The start-up/shutdown exemptions apply only to select facilities with coal-fired utility boilers controlled with ESPs, so there is no need to justify the technical infeasibility for other sources. Indiana's October 10, 2001, letter provides technical justification from Cinergy, Hoosier Energy, NIPSCO, and Indianapolis Power & Light. This technical justification is applicable for all 22 facilities seeking start-up/shutdown exemptions. Energizing an ESP before the flue gas temperature is above the sulfuric acid dew point can result in damage to the equipment. Condensation of sulfuric acid in the ESP may cause corrosion. It may also condense on the

dust in the unit causing hard deposits which reduce the PM-10 collection efficiency of the ESP. During the ignition of a coal-fired boiler, there is a risk of a fire or an explosion if the ESP is energized. Normal sparking can ignite any combustible gases in the unit.

*Comment 7:* The State must be required to show that its minimum criteria for exemptions in 326 IAC 5-1-3(e)(2) will minimize the frequency and duration of excess emissions during start-up and shutdown to the maximum extent practicable. The State rule does not require the facility to, at all times, be operated in a manner consistent with good practice for minimizing emissions. The State rule also does not require the source to demonstrate that all possible steps were taken to minimize the impact of emissions during start-up and shutdown on air quality. In addition, the State rule does not require the owner or operator's action during start-up and shutdown to be properly documented.

*Response 7:* In fact, language in the State rule does satisfy the September 20, 1999 policy requirement. 326 IAC 5-1-3(e) states that each facility must submit "documentation including, but not limited to, historical opacity information during periods of start-up and shutdown and other pertinent information and proposed permit conditions that limit the duration and extent of excess emissions to the greatest practicable extent. The commissioner shall incorporate permit conditions that are necessary for safe and proper operation of equipment and minimize the duration and extent of excess emissions. Such conditions shall require the source to keep records of times of start-ups, shutdowns, and ash removals and may be more stringent than the operating permit conditions in effect as of the effective date of this rule." The rule was effective on November 8, 1998. In the October 10, 2001 letter, Indiana adds, "we anticipate tightening the allowable time periods and requirements for these limitations as we develop the Title V permits for these sources, based on historical information about emissions during these periods." This will further minimize the frequency and duration of excess emissions.

*Comment 8:* Start-up/shutdown conditions under 326 IAC 5-1-3(e) " \* \* \* appear to be allowed for facilities located in non-attainment areas."

*Response 8:* This is not the case. The first sentence of 326 IAC 5-1-3(e) explicitly states that " . . . this section applies to sources existing on the effective date of this rule located in

counties other than Lake County." As previously stated, the only PM-10 non-attainment area in Indiana is located in Lake County.

*Comment 9:* The State's modeling analysis does not adequately demonstrate that the SIP relaxation will not result in a violation of the National Ambient Air Quality Standards (NAAQS). The State claimed that this exemption would apply to 22 facilities, but modeled only one facility. The State's modeling analysis did not address whether the facility modeled had the highest emission rate. The analysis also assumed that the topography, meteorological conditions, distance from stack to fence line, background concentrations, and locations of other nearby sources were identical to the source modeled. The State should have modeled every source with an exemption from the SIP opacity limits with the specific conditions applicable to each facility to truly examine worst case ambient impacts. Thus, this analysis is fatally flawed and is not sufficient to demonstrate that the SIP revision won't allow for a violation of the NAAQS.

*Response 9:* Indiana used a worst-case approach to assess whether the exemptions its rules allow would cause violations of the NAAQS near any of the eligible facilities. Indiana sought to model a scenario that would show impacts equal to or greater than the impacts that would be expected at any of the 22 facilities eligible for these exemptions. This approach seeks to avoid unnecessary and overly burdensome analyses whose results (i.e., attainment) can be deduced from modeling a single worst-case scenario. The question, then, is whether Indiana has in fact modeled a worst-case scenario.

A critical element of the modeled scenario is stack height. Indiana modeled the facility with the shortest stack of the 22 eligible facilities. Indeed, the modeled stack is short enough to have plume downwash, which causes much greater impacts than would occur otherwise. EPA expects this factor to have more effect on plant impacts than the emission differences among these facilities, so that start-up and shutdown at the modeled facility should cause higher concentrations than they would at the other 21 eligible facilities.

The commenter identifies several other parameters that can affect plant impacts. However, none of these parameters is likely to affect plant impacts sufficiently to alter which plant has the worst-case impact. Meteorological variations from day to day obviously create substantial day to

day concentration variations, but the question here is whether different locations in Indiana could be expected to have significantly different ensembles of meteorological conditions. EPA believes that the climatology is sufficiently similar across Indiana that an analysis for the one location analyzed by the State is sufficient. Distance from stack to plant fence line can be important for low-level releases, but the peak impacts from the sources involved are generally more than a kilometer from the source, i.e., well beyond plant fence line. Therefore, differences in fence line distances will likely not affect peak concentrations. Terrain can significantly affect concentrations, particularly if the terrain rises above the top of the stack. However, the stacks of the sources involved are in most cases very tall. They are well above both plant grounds and the highest nearby hilltops. EPA believes that Indiana has modeled the plant with stacks that are not just the shortest but in fact the least elevation above nearby terrain.

The commenter further expresses concern about variations in background concentrations. EPA examined monitoring data throughout the State. Sources in Lake County are not eligible for the exemptions at issue, and so background concentrations there are not relevant. In the rest of the State, the measured background concentrations are comparable to the background concentrations that Indiana used. Whereas Lake County has a complicated mix of sources, making it difficult to assess background concentrations, the rest of the State has fewer sources, such that the "background" impact of other sources can be reasonably represented with available monitoring data. As a result, EPA concludes that the addition of the plant impacts modeled by Indiana to concentrations elsewhere in the State, other than Lake County, would not yield violations of the air quality standards. More generally, EPA concludes that Indiana has modeled a worst-case scenario. Indiana's modeling showed a 24-hour concentration for this scenario of 98.6  $\mu\text{g}/\text{m}^3$ , well below the air quality standard of 150  $\mu\text{g}/\text{m}^3$ . EPA therefore concludes that Indiana's modeling suffices to demonstrate that the exemptions which Indiana's rule authorizes would not allow violations of air quality standards.

*Comment 10:* The State has not demonstrated that the SIP relaxation will not adversely impact the Prevention of Significant Deterioration (PSD) increments.

*Response 10:* Under 40 CFR 51.166 (a)(2), a demonstration that a SIP

revision will not cause or contribute to a violation of the applicable PSD increments is required, "[i]f a State Implementation Plan revision would result in increased air quality deterioration over any baseline concentration." Increment violation can only occur if a source or sources increase actual emissions above baseline levels. EPA views the emissions associated with start-up and shutdown as emissions that were unavoidably present during the baseline period. While SIP relaxations ordinarily allow an increase in emissions, this SIP revision will not yield any increase in emissions above baseline levels and some sources will actually require a decrease in emissions. Consequently, this SIP revision will not consume any PSD increment and a PSD increment consumption analysis is not required.

#### VI. What Rulemaking Action Is the EPA Taking?

After considering the comments received, EPA continues to believe that Indiana's rule revisions are acceptable, as proposed in the November 30, 2001 proposed rule (66 FR 59757). Therefore, the EPA is approving revisions to Indiana's opacity rule. The revised regulation address provisions concerning the start-up and shutdown of operations, terminology used in discussing averaging periods, time periods for temporary exemptions, alternative opacity limits, and conflicts between visible readings and COM data. This rule will be effective on August 15, 2002.

#### VII. Administrative Requirements

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. For this reason, 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). 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.). 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 (Public Law 104-4).

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 (65 FR 67249, November 9, 2000). 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. 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 is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 Clean Air Act. 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. 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.).

The Congressional Review Act, 5 U.S.C. section 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. section 804(2).

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 September 16, 2002. 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 10, 2002.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

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 *et seq.*

#### Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(146) to read as follows:

##### § 52.770 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(146) On October 21, 1999, Indiana submitted revised state opacity regulations. The submittal amends 326 IAC 5-1-1, 5-1-2, 5-1-3, 5-1-4(b), and 5-1-5(b). The revisions address provisions concerning the startup and shutdown of operations, averaging period terminology, temporary exemptions, alternative opacity limits, and conflicts between continuous opacity monitor and visual readings.

(i) *Incorporation by reference.* Opacity limits for Indiana contained in Indiana Administrative Code Title 326: Air

Pollution Control Board, Article 5: Opacity Regulations. Filed with the Secretary of State on October 9, 1998 and effective on November 8, 1998. Published in 22 *Indiana Register* 426 on November 1, 1998.

(ii) *Additional material.* Letter of October 10, 2001, from Janet McCabe, Indiana Department of Environmental Management, Assistant Commissioner of the Office of Air Quality, to Stephen Rothblatt, US EPA Region 5, Chief of Air Programs Branch. The letter adds the technical justification and air quality analysis required for alternate opacity limits.

[FR Doc. 02-17235 Filed 7-15-02; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[TN-121; TN-205-200206a; FRL-7245-7]

#### Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to Tennessee Implementation Plan

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on September 1, 1993, and April 9, 1998. The first revision adds definitions for particulate matter based upon the measurement of particles having an aerodynamic diameter of 10 microns or less (PM<sub>10</sub>). The second revision combines the Soda Recovery Boilers rule with the Kraft Mill Recovery Furnaces rule in the Visible Emission regulations.

**DATES:** This direct final rule is effective September 16, 2002, without further notice, unless EPA receives adverse comment by August 15, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** All comments should be addressed to Steven M. Scofield at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

Copies of the State submittals are available at the following addresses for inspection during normal business hours: Air and Radiation Docket and

Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Steven M. Scofield, 404/562-9034.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243-1531. 615/532-0554.

#### FOR FURTHER INFORMATION CONTACT:

Steven M. Scofield; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303-8960. Mr. Scofield can also be reached by phone at (404) 562-9034 or by electronic mail at [scofield.steve@epa.gov](mailto:scofield.steve@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On July 1, 1987 (52 FR 24634), EPA revised the national ambient air quality standards (NAAQS) for particulate matter, pursuant to section 109 of the Clean Air Act (CAA). Total suspended particulate (TSP) was replaced as the indicator for the particulate matter ambient standard by a new indicator, particulate matter with a nominal aerodynamic diameter of 10 micrometers or less in size (PM<sub>10</sub>). In response, Tennessee amended its rules and regulations which dealt with particulate matter to assure compliance with the particulate NAAQS throughout Tennessee.

##### II. Analysis of State's Submittals

On September 1, 1993, the State of Tennessee, through the TDEC, submitted a revision to rule 1200-3-2-.01 General Definitions, adding definitions for (hhh) "PM<sub>10</sub> emissions" and (jjj) "Particulate Matter Emissions." These definitions comply with EPA's regulations for control strategies to attain and maintain the NAAQS for particulate matter and for permits to construct pursuant to parts C and D of the CAA.

On April 9, 1998, the State of Tennessee, through the TDEC, submitted revisions to Chapter 1200-3-5 Visible Emission Regulations. Rules 1200-3-5-.09 Kraft Mill Recovery Furnaces and 1200-3-5-.11 Soda Recovery Boilers are being combined into 1200-3-5-.09, with 1200-3-5-.11 being repealed. A revision to paragraph (3) of rule 1200-3-5-.09, which changes