

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R05-OAR-2010-1002 FRL-9430-8]

**Approval and Promulgation of Air Quality Implementation Plans; Indiana; Modifications to Indiana Prevention of Significant Deterioration and Non-Attainment New Source Review Rules****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve Indiana's modifications to its Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) rules. The amendments include grammatical changes, corrections to numbering, addition of definitions consistent with Federal PSD and NNSR regulations, and removal of references to provisions which were vacated in the Federal rules. Indiana submitted these rule revisions for approval on November 24, 2010. They are consistent with the current Federal PSD and NNSR regulations.

**DATES:** Comments must be received on or before August 8, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2010-1002, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov).

3. *Fax*: (312) 692-2450.

4. *Mail*: Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: Pamela Blakley, Chief, Air Permits 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.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Charmagne Ackerman, Environmental Engineer, Air Permits Section, Air

Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0448, [ackerman.charmagne@epa.gov](mailto:ackerman.charmagne@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's State Implementation Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: June 28, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2011-17037 Filed 7-7-11; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R09-OAR-2011-0396; FRL-9432-2]

**Revisions to the California State Implementation Plan, South Coast Air Quality Management District****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a limited approval and limited disapproval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO<sub>x</sub>) emissions from boiler, steam generators and process heaters larger than 2 MMBtu/hour that are not subject to RECLAIM. We are proposing action on local rules that

regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by August 8, 2011.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2011-0396, by one of the following methods:

1. *Federal eRulemaking Portal*:

*http://www.regulations.gov*. Follow the on-line instructions.

2. *E-mail*: [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver*: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

*Docket:* Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Idalia Pérez, EPA Region IX, (415) 972-3248, [perez.idalia@epa.gov](mailto:perez.idalia@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, "we," "us" and "our" refer to EPA.

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**I. The State's Submittal****A. What rules did the State submit?**

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

**TABLE 1—SUBMITTED RULES**

| Local agency | Rule No. | Rule title                                                                                                                          | Adopted  | Submitted |
|--------------|----------|-------------------------------------------------------------------------------------------------------------------------------------|----------|-----------|
| SCAQMD ..... | 1146     | Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators and Process Heaters.       | 09/05/08 | 07/20/10  |
| SCAQMD ..... | 1146.1   | Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators and Process Heaters. | 09/05/08 | 07/20/10  |

On August 25, 2010, the submittal for SCAQMD Rules 1146 and 1146.1 was found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

**B. Are there other versions of these rules?**

We approved an earlier version of Rule 1146 into the SIP on April 8, 2008 (67 FR 16640) and of Rule 1146.1 on September 6, 1995 (60 FR 46220).

**C. What is the purpose of the submitted rule revisions?**

NO<sub>x</sub> helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO<sub>x</sub> emissions. Rule 1146 limits NO<sub>x</sub> and carbon monoxide (CO) emissions from boilers, steam generators and process heaters with a total rated heat input larger than 5 MMBtu/hour. Rule 1146.1 limits NO<sub>x</sub> and CO emissions from boilers, steam generators and process heaters with a total rated heat input larger than 2 MMBtu/hour and less than 5 MMBtu/hour. EPA's technical support documents (TSD) have more information about these rules.

**II. EPA's Evaluation and Action****A. How is EPA evaluating the rules?**

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in certain ozone nonattainment areas (see sections 182(b)(2) and 182(f)), must not interfere with any applicable requirements concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act (CAA

110(l)) or modify, in a nonattainment area, any SIP-approved control requirement in effect before November 15, 1990 (CAA 193). Section 172(c)(1) of the Act also requires implementation of all reasonably available control measures (RACM) as expeditiously as practicable in nonattainment areas. Because the area regulated by SCAQMD is designated nonattainment for the fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS) and designated and classified as extreme nonattainment for the ozone NAAQS (see 40 CFR 81.305), Rules 1146 and 1146.1 must ensure RACT. Additionally, the RACM requirement in CAA section 172(c)(1) applies to this area.

Guidance and policy documents that we use to evaluate enforceability, RACT and RACM requirements consistently include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement), 57 FR 55620, November 25, 1992.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "Clean Air Fine Particle Implementation Rule," 72 FR 20586, April 25, 2007.
5. "Credible Evidence Revisions; Final Rule," 62 FR 8314, February 24, 1997.
6. "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators,

and Process Heaters," CARB, July 18, 1991.

7. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Industrial/Commercial/Institutional (ICI) Boilers", U.S. EPA, March 1994.

8. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Utility Boilers", U.S. EPA, March 1994.

9. "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency", Memorandum from J. Craig Potter, Thomas L. Adams Jr., Francis S. Blake, U.S. EPA, September 23, 1987.

10. "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown", Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, September 20, 1999.

**B. Do the rules meet the evaluation criteria?**

Rules 1146 and 1146.1 improve the SIP by establishing more stringent emission limits. The rules are largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. We believe that in implementing RACT for NO<sub>x</sub>, the submitted rules also satisfy RACM requirements for NO<sub>x</sub> as a PM<sub>2.5</sub> precursor. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

**C. What are the rule deficiencies?**

These provisions in Rule 1146 conflict with section 110 and part D of the Act and prevent full approval of the SIP revision. Section (d)(8) and Section (d)(10) preclude the use of both source test data and portable analyzers test results from being used to prove a violation of the emission standard. This

contradicts CAA requirements for enforceability and the national credible evidence rule from 1997 (62 FR 8314).

These provisions in Rule 1146.1 conflict with section 110 and part D of the Act and prevent full approval of the SIP revision. Section (d)(7) and Section (d)(9) preclude the use of both source test data and portable analyzers test results from being used to prove a violation of the emission standard. This contradicts CAA requirements for enforceability and the national credible evidence rule from 1997 (62 FR 8314).

#### *D. EPA Recommendations To Further Improve the Rules*

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules.

#### *E. Proposed Action and Public Comment*

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rules to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rules under sections 110(k)(3) and 301(a). The South Coast AQMD has included these rules in the demonstration, required by CAA section 172(c)(1), that its SIP provides for the implementation of RACM as necessary to attain the 8-hour ozone and PM<sub>2.5</sub> NAAQS as expeditiously as practicable. While we are proposing to find that the rules provide RACM level controls, we are also proposing to find that certain provisions of the rules raise enforcement concerns. Because of these concerns and the District's inclusion of these rules in its CAA-required RACM demonstration, if this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the disapproval. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the 2-year clock for the Federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the SCAQMD, and EPA's final limited disapproval would not prevent the local agency from enforcing them. The limited disapproval also would not prevent any portion of the rules from being incorporated by reference into the Federally enforceable SIP as discussed in a July 9, 1992 EPA

memo found at: <http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf>.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

### **III. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

#### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the proposed Federal SIP limited approval/limited disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of 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).

#### *D. Unfunded Mandates Reform Act*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to

accompany 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. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve and disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

#### *E. Executive Order 13132, Federalism*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will 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, because it merely proposes to approve or disapprove State rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” This proposed rule does not have Tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from Tribal officials.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves state rules implementing a Federal standard.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

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

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

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

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

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

Dated: June 21, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2011–17262 Filed 7–7–11; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 382 and 391**

[Docket No. FMCSA–2011–0073]

**RIN 2126–AB35**

**Harmonizing Schedule I Drug Requirements**

**AGENCY:** Federal Motor Carrier Safety Administration, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) proposes to amend the physical qualifications for drivers and the instructions for the medical examination report to clarify that drivers may not use Schedule I drugs and be qualified to drive commercial motor vehicles under any circumstances. The proposal also harmonizes FMCSA’s provisions regarding pre-employment and return-to-duty test refusals with corresponding Department of Transportation (DOT)-wide provisions. Finally, the proposal corrects inaccurate uses of the term “actual knowledge.”

**DATES:** Comments and related material must be submitted on or before September 6, 2011.

**ADDRESSES:** You may submit comments identified by docket number FMCSA–2011–0073 using any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Angela Ward, Nurse Consultant, Medical Programs Office, Federal Motor Carrier Safety Administration, telephone: 202–366–