

(1) Rule 1107 adopted on June 1, 1979, and amended on November 9, 2001.

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[FR Doc. 02-20349 Filed 8-12-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 143-1a; FRL-7249-4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On March 5, 2002, the Indiana Department of Environmental Management (IDEM) submitted revisions to the Indiana Administrative Code (IAC) for approval into the Indiana State Implementation Plan (SIP). IDEM amended this submittal in a letter dated May 3, 2002. This regulatory update changes rule language concerning Indiana's permitting programs. Included in this submittal is a provision to assure that applicable requirements exist independently of title V permits. EPA is approving the rule language in this submittal because it is consistent with EPA's regulations governing state permit programs.

DATES: This direct final rule is effective October 15, 2002 without further notice unless EPA receives adverse comments in writing by September 12, 2002. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to Ms. Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Attention: Mr. Sam Portanova, at the EPA Region 5 office listed below. Copies of the state's submittal and other supporting information used in developing this direct final rule are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois, 60604. Please contact Sam Portanova at (312) 886-3189 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR-18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Telephone Number: (312) 886-3189, E-Mail Address: portanova.sam@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is being addressed in this document?
What are the program changes that EPA is approving?
What is involved in this final action?

What Is Being Addressed in This Document?

On March 5, 2002, IDEM submitted regulatory provisions for approval into the state SIP. IDEM amended this submittal on May 3, 2002. This submittal includes 326 IAC 2-1.1-9.5 which is related to the implementation of Indiana's air permit programs. In today's action, EPA approves the submitted rule language into the Indiana SIP.

What Are the Program Changes That EPA Is Approving?

Indiana's construction permits expire upon issuance of a valid title V permit. Title V requires, however, that applicable requirements exist independently of title V permits. Prior to the adoption of 326 IAC 2-1.1-9.5, Indiana's rules did not assure that construction permit conditions exist independently of title V permits. Therefore, this issue was identified as not meeting the program approval requirements of title V and 40 CFR part 70 in a notice of program deficiency (NOD) for the Indiana title V program published in the December 11, 2001 **Federal Register** (66 FR 64039).

Indiana revised the state regulations in 326 IAC 2-1.1-9.5 to say that "any condition established in a permit issued pursuant to a permitting program approved into the state implementation plan shall remain in effect until: (1) The condition is modified in a subsequent permit action; or (2) the emission unit to which the condition pertains permanently ceases operation." "Subsequent permit action" in this rule refers to a permit action taken pursuant to Indiana's construction permit authority. Since title V does not confer authority to modify existing applicable requirements, including construction permit conditions, "subsequent permit action" does not include permit actions taken pursuant to Indiana's title V program. In today's action, EPA approves this regulatory provision into the Indiana SIP. This approval satisfies Indiana's requirement to correct an identified title V program deficiency and resolves the issue published in the December 11, 2001 NOD.

What Is Involved in This Final Action?

EPA approves 326 IAC 2-1.1-9.5 into the Indiana SIP. The approval of this

regulation resolves a deficiency issue raised in EPA's December 11, 2001 NOD of the Indiana title V program.

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 October 15, 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, Carbon Monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Dioxide, Volatile organic compounds.

Dated: June 28, 2002.

Jo Lynn Traub,

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.*

2. Section 52.770 is amended by adding paragraph (c)(151) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(151) On March 5, 2002, the Indiana Department of Environmental Management requested a revision to the Indiana State Implementation Plan in the form of revisions to the Permit Review Rules intended to add regulations to assure that construction permit conditions exist independently of title V permits. This revision took the form of an amendment to Title 326: Air Pollution Control Board of the Indiana Administrative Code (326 IAC) 2-1.1-9.5 General Provisions; Term of Permit.

(i) Incorporation by reference.

(A) Indiana Administrative Code Rules 326 IAC 2-1.1-9.5. Adopted by the Indiana Air Pollution Control Board October 3, 2001. Filed with the Secretary of State December 20, 2001. Effective January 19, 2002. Published at Indiana Register, Volume 25, Number 5, February 1, 2002.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-7258-8]

RIN 2060-AE77

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On June 14, 2002, the EPA promulgated amendments to the national emission standards for the secondary aluminum production industry as a direct final rule, along with a parallel proposal to be used as a basis for final action in the event that

we received any adverse comments on the direct final amendments. Because one commenter submitted adverse comments on several of the provisions in the direct final rule, we are withdrawing the entire direct final rule. We will address the adverse comments in a subsequent final rule based on the parallel proposal published on June 14, 2002. We intend to publish the subsequent final rule as soon as possible.

DATES: As of August 13, 2002, the EPA withdraws the amendments to §§ 63.1501, 63.1505, 63.1506, 63.1510, 63.1511, 63.1515 and Appendix A to subpart RRR published at 67 FR 41118 on June 14, 2002.

ADDRESSES: Docket number A-2002-05, containing supporting information used in the development of this notice, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102T), 1301 Constitution Avenue, NW, Room B108, Washington, DC 20460, or by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. John Schaefer, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504-05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-0296, facsimile number (919) 541-5600, electronic mail address: schaefer.john@epa.gov.

SUPPLEMENTARY INFORMATION: On June 14, 2002, we published a direct final rule (67 FR 41118) and a parallel proposed rule (67 FR 41136) to amend the national emission standards for secondary aluminum production (40 CFR part 63, subpart RRR). The amendments were the result of settlement agreements which we executed in two cases which were brought seeking judicial review of the subpart RRR. The intent of the amendments in the direct final rule was to eliminate confusion and to clarify various compliance dates in the promulgated standard, to encourage early performance tests, and to resolve some basic applicability questions being addressed in a separate rulemaking before the compliance date for certain new sources.

We stated in the preamble to the direct final rule and parallel proposal that if we received significant material adverse comment by July 15, 2002, on