

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not cause an environmental risk to health or risk to safety that might disproportionately affect children. No comments were received as a result of the NPRM, relative to protection of children and no changes to the proposed regulation were made.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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. No comments were received as a result of the NPRM, relative to Indian tribal governments and no changes to the proposed regulation were made.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211. No comments were received as a result of the NPRM, relative to energy effects and no changes to the proposed regulation were made.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. specifications of materials, performance, design, or operation; test methods; sampling

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA. Since this proposed rule will alter the normal operating conditions of the drawbridges, it falls within this exclusion. A "Categorical Exclusion Determination" is available in the docket indicated under **ADDRESSES**. No comments were received as a result of the NPRM, relative to any environmental issues and no changes to the proposed regulation were made.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.684 is added to read as follows:

#### § 117.684 Bayou Portage.

The draw of the Henderson Avenue Bridge, mile 2.0, at Pass Christian, MS shall open on signal if at least two hours notice is given to the Harrison County Board of Supervisors.

Dated: November 10, 2004.

**J.W. Stark**

*Acting Captain, U.S. Coast Guard,  
Commander, 8th Coast Guard Dist.*

[FR Doc. 04–26338 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R05–OAR–2004–IN–0005; FRL–7838–3]

### Approval and Promulgation of State Implementation Plans; Indiana; Rules To Control Particulate Matter and Carbon Monoxide From Incinerators

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

**ACTION:** Direct final rule.

**SUMMARY:** On October 30, 2002, and January 10, 2003, Indiana submitted a plan to EPA which contained revised and updated rules to control emissions of particulate matter (PM) from incinerators and carbon monoxide (CO) from incinerators and other industrial categories. The rule changes accomplish several objectives. First, they re-adopt useful elements of regulations which were scheduled to expire because of "sunset requirements" under the Indiana Code. In addition, they incorporate by reference a number of applicable EPA rules affecting certain types of incineration units and clarify which limits pertain to other types of units. The revised requirements will apply to those incinerators in the State where Federal rules or guidelines do not apply. Finally, Indiana has eliminated references to language which is outdated and unclear. EPA is taking final action to approve this State plan revision.

**DATES:** This rule is effective January 31, 2005, unless EPA receives relevant adverse written comments by December 30, 2004. If EPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit comments, identified by Regional Material in e-Docket (RME) ID No. R05–OAR–2004–IN–0005 by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Agency Web site: <http://docket.epa.gov/rmepub/index.jsp> Regional Material in e-Docket (RME), EPA's electronic public docket and

comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search" then key in the instructions for submitting comments.

*E-mail:* [bortzer.jay@epa.gov](mailto:bortzer.jay@epa.gov).

*Fax:* (312) 886-5824.

*Mail:* You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR-18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

*Hand delivery:* Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR-18J), 18th floor, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's 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 RME ID No. R05-OAR-2004-IN-0005. EPA's policy is that all comments received will be included in the public docket without change, 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 RME *regulations.gov*, or e-mail. The EPA RME Web site and the Federal *regulations.gov* Web site are "anonymous access" systems, 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 RME or *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. For additional instructions on submitting comments, go to Section I of the SUPPLEMENTARY INFORMATION section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

*Docket:* All documents in the electronic docket are listed in the RME index at <http://www.epa.gov/rmepub/index.jsp>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Paskevicz, Engineer at (312) 886-6084 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6084.

[paskevicz.john@epa.gov](mailto:paskevicz.john@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, the terms "you" refer to the reader of this rule and/or to sources subject to the State rule, and the terms "we", "us", and "our" refer to EPA.

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**I. General Information**

**A. Does This Action Apply to Me?**

This action applies to particulate matter and carbon monoxide emission limitations for incinerators.

**B. How Can I Get Copies of This Document and Other Related Information?**

1. The Regional Office has established an electronic public rulemaking file

available for inspection at Regional Material in EDocket (RME) under RME ID No. R05-OAR-2004-IN-0005, and a hard copy file which is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include any material claimed by the submittal to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact John Paskevicz, listed in the **FOR FURTHER INFORMATION CONTACT** section, to schedule your inspection of the file. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

2. **Electronic Access.** You may access this **Federal Register** document electronically through the *regulations.gov* Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

**C. How and to Whom do I Submit Comments?**

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air

Docket "R05-OAR-2004-IN-0005" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

## II. What Is EPA Approving in This Action?

We are approving revised rules submitted by the State of Indiana that control the emission of PM from incinerators, 326 Indiana Administrative Code (IAC) 4-2; and of CO emissions from incinerators and other industrial categories, 326 IAC 9-1. The State's rules are part of the Indiana plan which, when approved and implemented, will contribute to the continued attainment of the air quality standards for these two criteria pollutants.

Rule 326 IAC 4-2 restricts the amount of PM allowed to be emitted for all incinerators, except those in residential units of four or fewer families and those incinerators identified in the "Incorporation by Reference" (IBR) provisions. Rule 326 IAC 4-2-1 lists the applicable exceptions, including sources already subject to a number of Federal rules and federally-approved State rules which the State incorporates by reference.

Rule 326 IAC 4-2-2 identifies requirements with which all other incinerators must comply. These include a requirement that all incinerators be maintained, operated, and burn waste in accordance with the manufacturer's specifications or in accordance with an operation and maintenance plan, as specified in the rule. In addition, 326 IAC 4-2-2 establishes an emission rate for sources with a solid waste charging capacity of less than 200 pounds per hour, and retains the emission rate for sources larger than 200 pounds per hour charging capacity.

Rule 326 IAC 9-1 restricts the amount of CO allowed to be emitted from incinerators and several other industrial categories. Rule 326 IAC 9-1-1(a) contains the general applicability provisions, *i.e.*, all stationary sources of CO emissions commencing operation

after March 21, 1972 and for which an emission limit has been established in section 2 of the rule. Rule 326 IAC 9-1-1(b) lists the applicable exceptions, including sources already subject to a certain Federal rules and federally-approved State rules which the State incorporates by reference.

Rule 326 IAC 9-1-2 specifies emission limits for sources of CO affected by this rule change. They include: Petroleum refineries, ferrous metal smelters and refuse incinerators and refuse burning equipment. All of these sources are required to control their CO emissions by incineration, in a CO boiler, a direct flame afterburner, a secondary chamber or a recuperative incinerator, as specified in the revised rule. The Indiana rule also provides alternatives to these control methods if the method proposed by a source is submitted as an amendment to the State implementation plan and approved by the EPA.

## III. Summary of the State Submittal

### *What Information Did Indiana Submit To Support the Revision?*

Indiana submitted material supporting this revision to the State implementation plan on two separate dates. The first was submitted by cover letter of October 30, 2002, and included notices of public hearings, publishers' affidavits, transcripts of public hearings, and a letter requesting the plan revision. The document dated January 10, 2003, included both final rules 326 IAC 4-2, and 326 IAC 9-1, as LSA Document #00-44(F)(2) published in the Indiana Register on January 1, 2003, 26 Indiana Rule 1070.

It should be noted that EPA originally approved PM rule 326 IAC 4-2 on June 22, 1978 (43 FR 26722), as APC 7. In addition, EPA originally approved CO rule 326 IAC 9-1 on August 24, 1976 (41 FR 35677), as APC 16. Both rules have been reissued on several occasions after being recodified, and are about to expire (sunset).<sup>1</sup> Indiana identified these rules for re-adoption because there are sources in the State which should still be regulated by these rules.

In addition, the Indiana amended rule incorporates by reference applicable federal New Source Performance

Standards at 40 CFR part 60; applicable State plans for designated facilities and pollutants at 40 CFR part 62; and applicable National Emission Standards for Hazardous Air Pollutants at 40 CFR parts 61 and 63. A more detailed list of these provisions is provided below.

Indiana has also eliminated references to language which is outdated and unclear. For instance, 326 IAC 4-2 no longer refers to "hazardous materials, pathogenic bacteria, dangerous chemicals or gases, and noxious odors."

### *Why Did Indiana Change These Rules?*

The rulemaking action is required by Indiana Code (IC) 13, which regulates the expiration and re-adoption of administrative rules. For example, a rule that was adopted under provision of IC 13 and was in force on December 31, 1995, expired on January 1, 2002. The two rules addressed in this action are being revised and re-adopted in order to retain coverage of sources which would otherwise not be covered by any rule if the amended rules were to expire.

### *What Changes Did Indiana Make?*

Indiana requested approval of two amendments to the State rules 326 IAC 4-2 and 326 IAC 9-1. The amendments in 326 IAC 4-2 change the language in the rules to require that incinerators operate and burn waste in accordance with the manufacturer's specifications or with an operation and maintenance plan, as directed in the rule. PM limits remain the same as in the original rule, but are relocated within the rule to accommodate the new and added provisions. Indiana exempted from the rule incinerators that were subject to more stringent PM limits provided in listed Federal and federally-approved State rules. The revised rule outlines elements of an operation and maintenance plan and the responsibilities of the owner or operator with regard to communication with the Indiana Department of Environmental Management (IDEM) on matters of compliance with the rule. This rule revision does not change the provision which exempts residential units consisting of four or fewer families.

The changes in 326 IAC 9-1 eliminate specific references, in the boiler or direct flame afterburner, to flame temperature and retention time in controlling emissions of CO. The rule change directs a source not to operate an incineration unit unless the waste gas stream is burned in a boiler, direct-flame afterburner, recuperative incinerator, or secondary chamber. This rule applies to grey iron cupolas, blast furnaces, basic oxygen steel furnaces, or other ferrous metal smelting equipment

<sup>1</sup> The Indiana rulemaking was required pursuant to Indiana Code (IC) 13-14-9.5, which provides for the expiration and re-adoption of administrative rules. A rule that was adopted under provision of IC 13 and was in effect on December 31, 1995, expires not later than January 1, 2002. All rules adopted after that date under IC 13-14-9, with some exception, expire on January 1 of the seventh year after the year in which each rule takes effect. Rules that incorporate a Federal regulation by reference are not subject to the re-adoption process.

having a capacity of ten tons per hour or more process weight. The rule also applies to sources of CO in petroleum refining operations where catalyst regeneration and petroleum fluid coking units (known as cokers) must be controlled by a device noted above.

*What Other Changes Did the Indiana Plan Revision Include?*

Indiana incorporated by reference a number of Federal and federally-approved State rules into the State plan. Sources covered by the identified Federal rules are not subject to the revised State rules (326 IAC 4-2 and 326 IAC 9-1).

The regulations listed below have been incorporated by reference in 326 IAC 4-2-1(b)(2). Sources covered by these rules are exempted by the Indiana amended PM rule:

1. 40 CFR part 60, subpart Eb, Large Municipal Waste Combustors for which Construction Commenced after September 20, 1994.

2. 40 CFR part 60, subpart Ec, Hospital/Medical/ Infectious Waste Incinerators for which Construction Commenced after June 20, 1996.

3. 40 CFR part 60, subpart CCCC, Commercial and Industrial Solid Waste Incineration Units for Construction Commenced after November 30, 1999.

4. The State Plan approved under 40 CFR 62.3640 through 40 CFR 62.3642, Hospital/Medical/Infectious Waste Incinerators.

5. The State Plan approved under 40 CFR 62.3650 through 40 CFR 62.3652, Large Municipal Waste Combustors.

6. 40 CFR part 63, subpart EEE, Hazardous Waste Combustors.

The regulations listed below have been incorporated by reference in 326 IAC 9-1(b). Sources covered by these rules are exempted by the Indiana amended CO rule:

1. 40 CFR part 60, Standards of Performance for New Stationary Sources.

2. The State Plan approved under 40 CFR part 62, subpart P, Approval and Promulgation of State Plans for Specific Sources and Facilities in Indiana.

3. 40 CFR part 62, subpart FFF, Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or before September 20, 1994.

4. 40 CFR part 62, subpart HHH, Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or before June 20, 1996.

5. 40 CFR part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories.

*What Public Review Opportunities Did Indiana Provide?*

Indiana published notices of these proposed rule revisions on March 1, 2000, and May 1, 2000, giving first notice to the public of the intent to re-adopt rules 326 IAC 4-2 and 326 IAC 9-1. Indiana announced a second notice of the comment period on October 1, 2000, and January 1, 2001. Indiana held public hearings on March 7, 2001, and August 7, 2002, following publication of notices in newspapers around the State. Indiana provided to EPA copies of the public record of these hearings as part of the submittal of the rule changes. EPA is satisfied that Indiana provided adequate opportunity for public review and comment on this rule revision.

**IV. EPA Review and Action**

*Why Is the Indiana Plan Revision Approveable?*

EPA has reviewed the rule changes and found them to be approveable because they continue to provide for attainment and maintenance of the CO and PM air quality standards. This is consistent with section 110 of the Clean Air Act (CAA), which requires State plans to contain control measures to meet requirements of the CAA.

*What Action Is EPA Taking?*

In this direct final rule, EPA is approving the amended rules 326 IAC 4-2, concerning PM, and 326 IAC 9-1, concerning CO, as submitted by Indiana on January 10, 2003. EPA is publishing this action without prior proposal because we view this as a noncontroversial revision to the State plan and we anticipate no adverse comment. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State's revised plan in the event that adverse comments are filed. The action will be effective without further notice unless EPA receives relevant adverse written comment by December 30, 2004. Should EPA receive such comments, we will publish a final rule informing the public that this action will not take effect. Any citizens and/or the affected community interested in commenting on this action are asked to submit comments to the individual listed at the front of this action. If no comments are received, the public is advised that this action will be effective on January 31, 2005.

**V. How Can I Get Copies of This Document and Other Related Information?**

1. The Regional Office has established an electronic public rulemaking file

available for inspection on RME and a hard copy file which is available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under RME ID No. R05-OAR-2004-IN-0005. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact John Paskevicz in the **FOR FURTHER INFORMATION CONTACT** section, to schedule your inspection of this file. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

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*How and To Whom Do I Submit Comments?*

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“R05-OAR-2004-IN-0005” in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

## 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*

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).

### *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 (65 FR 67249, 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.

### *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 is not economically significant.

### *National Technology Transfer Advancement Act*

In reviewing plan 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 plan 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.

### *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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

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 January 31, 2005. 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, Carbon monoxide, Reporting and recordkeeping requirements.

Dated: November 3, 2004.

### Norman Niedergang,

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)(161) to read as follows:

#### § 52.770 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(161) On October 30, 2002 and January 10, 2003, the Indiana Department of Environmental Management submitted revisions to Chapter 326 IAC 4-2 and 9-1 of the Indiana Administrative Code (IAC), an incineration plan for selected sources in

Indiana, with a request that the Indiana State Implementation Plan be revised to include these amended carbon monoxide and particulate matter rules.

(i) Incorporation by reference.

(A) *Indiana rule*: 326 IAC 4-2-1 and 326 IAC 4-2-2 (particulate matter), published at *Indiana Register*, January 1, 2003, 26 IR 1070, with an effective date of December 15, 2002.

(B) *Indiana rule*: 326 IAC 9-1-1 and 326 IAC 9-1-2 (carbon monoxide), published at *Indiana Register*, January 1, 2003, 26 IR 1072, with an effective date of December 15, 2002.

[FR Doc. 04-26401 Filed 11-29-04; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

42 CFR Parts 403, 412, 413, 418, 460, 480, 482, 483, 485, and 489

[CMS-1428-N]

RIN 0938-AM80

### Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates; Extension for the Hospital Applications To Receive Increases in Full Time Equivalent Resident Caps for Graduate Medical Education Payment

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

ACTION: Extension of application deadline.

**SUMMARY:** This document extends the deadline for hospitals to submit applications to CMS in order to receive increases in full-time equivalent (FTE) resident caps for graduate medical education (GME) payment purposes under section 1886(h)(7)(B) of the Social Security Act, added by section 422 of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003.

**DATES:** The deadline for receipt of applications to receive increases in FTE resident caps for GME payments is extended to December 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Heath Westcott, (410) 786-4515.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

We published a final rule in the *Federal Register* (69 FR 48916) that revised the Medicare hospital inpatient prospective payments systems for

operating and capital related costs to implement a number of changes made by the MMA.

Section 422 of the MMA (Pub. L. 108-173) provides for a reduction in the statutory resident caps under Medicare for certain hospitals and authorizes a "redistribution" of those FTE resident slots to other hospitals. Qualifying hospitals that submit a timely application may receive up to 25 additional FTE resident cap slots for direct GME and indirect medical education purposes.

#### II. Provisions of the Notice

In the Fiscal Year (FY) 2005 final rule (69 FR 49141 and 69 FR 49169), we stated that any hospital that wishes to receive an increase in its FTE resident cap(s) under section 1886(h)(7)(B) of the Social Security Act (the Act) must submit an application to the CMS Central Office and to the CMS Regional Office for the region in which the applicant hospital is located, and that the application must be received on or before December 1, 2004. In order to give hospitals more time to complete these applications, we are extending this deadline to December 15, 2004.

Additional information regarding reductions and increases in hospitals' FTE resident caps for purposes of direct and indirect GME payments under section 1886(h)(7) of the Act can be found in the August 11, 2004 *Federal Register* (69 FR 49112).

#### III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

**Authority:** Section 1886(h)(7)(B) of the Social Security Act (42 U.S.C. 1395ww(h)(7)(B)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program)

Dated: November 18, 2004.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: November 23, 2004.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 04-26356 Filed 11-24-04; 9:24 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 224

[Docket No. 041102303-4303-01; I.D. 101804A]

RIN 0648-AS76

### Regulations Governing the Approach to North Atlantic Right Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

**SUMMARY:** NMFS issues a correcting amendment to clarify the regulations that prohibit approaches within 500 yards (460 m) of North Atlantic right whales (right whales). The purpose of this action is to correct errors contained in the text of the regulation that inadvertently refers to regulations contained in the previous paragraph within 50 CFR part 224. These technical amendments will not change the regulations for approaching right whales found in § 224.103.

**DATES:** Effective November 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Brian D. Hopper, NMFS, Northeast Region, 978-281-9328; Barb Zoodsma, NMFS, Southeast Region, 904-321-2806; or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322.

**SUPPLEMENTARY INFORMATION:**

#### Background

The interim final rule implementing approach limits for right whales was published on February 13, 1997 (62 FR 6729), and codified at 50 CFR 222.32, subpart D of part 222. As part of an action taken to consolidate and reorganize existing NMFS regulations implementing the Endangered Species Act (ESA) pursuant to the President's Regulatory Reinvention Initiative (RRI), subpart D was removed from part 222 and relocated to part 224 (64 FR 14066, March 23, 1999). As a result of this reorganization, a new section was created in 50 CFR part 224 for the special prohibitions for endangered marine mammals, which included the regulations for approaching right and humpback whales.

Subsequent to the 1999 reorganization initiative, NMFS published a final rule to establish approach regulations for humpback whales within Alaskan waters (66 FR 29502, May 31, 2001). The final rule redesignated paragraphs