

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2012-0567; FRL-9902-36—Region 5]

### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Indiana PM<sub>2.5</sub> NSR

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to Indiana's state implementation plan as requested by the Indiana Department of Environmental Management (IDEM) to EPA on July 12, 2012, and December 12, 2012. The revisions to Indiana's state implementation plan (SIP) implement certain EPA regulations for particulate matter smaller than 2.5 micrometers (PM<sub>2.5</sub>) by establishing definitions related to PM<sub>2.5</sub>, defining PM<sub>2.5</sub> increment levels, and setting PM<sub>2.5</sub> class 1 variances. The revisions also incorporate definitions and regulations that recognize nitrogen oxides (NO<sub>x</sub>) as an ozone precursor.

**DATES:** Comments must be received on or before December 2, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2012-0567, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. Email: [damico.genevieve@epa.gov](mailto:damico.genevieve@epa.gov).
3. Fax: (312) 385-5501.
4. *Mail*: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: Genevieve Damico, 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.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2012-0567. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless

the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email 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 this document.

**Docket:** All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Michael Langman, Environmental Scientist, at (312) 886-6867 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Michael Langman, Environmental Scientist, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6867, [langman.michael@epa.gov](mailto:langman.michael@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean

EPA. This supplementary information section is arranged as follows:

- I. What should I consider as I prepare my comments for EPA?
- II. What is the background information for this action?
  - A. PM<sub>2.5</sub>-Related Actions
  - B. Ozone-Related Actions
  - C. Indiana's Actions
- III. What are the revisions that the State submitted for approval?
  - A. Rule 326 IAC 2-2-1, Definitions
  - B. Rule 326 IAC 2-2-4, Air Quality Analysis; Requirements
  - C. Rule 326 IAC 2-2-6, Increment Consumption; Requirements
  - D. Rule 326 IAC 2-2-14, Sources Impacting Federal Class I Areas; Additional Requirements
  - E. Rule 326 IAC 2-3-1, Definitions
  - F. Rule 326 IAC 5-1-5, Violations
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews

### I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

### II. What is the background information for this action?

IDEM has requested EPA's approval of several revisions to Indiana's SIP. These revisions were made to comply with regulations enacted to address the PM<sub>2.5</sub> national ambient air quality standards (NAAQS) and also to include NO<sub>x</sub> as a precursor to ozone. These revisions implement the new source review (NSR) and prevention of significant deterioration (PSD) program, as required by EPA's regulations.

### A. *PM<sub>2.5</sub>-Related Actions*

On April 25, 2007, EPA published (72 FR 20586) as a final rule in the **Federal Register** the “Clean Air Fine Particle Implementation Rule”. This action provides rules and guidance for the Clean Air Act requirements for SIPs to implement the 1997 fine particle NAAQS. As part of this rulemaking, EPA promulgated 40 CFR part 51, subpart Z “Provisions for Implementation of PM<sub>2.5</sub> National Ambient Air Quality Standards”. 40 CFR part 51, subpart Z outlines the requirements that a state SIP must meet to implement and comply with the PM<sub>2.5</sub> NAAQS. The final rule became effective on May 29, 2007.

On May 16, 2008, EPA published (73 FR 28321) as a final rule in the **Federal Register** the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)”. These regulations establish the PM<sub>2.5</sub> NSR program. Among the finalized elements of the PM<sub>2.5</sub> NSR program are provisions establishing the PM<sub>2.5</sub> major source threshold, significant emissions rate, and applicability of NSR to PM<sub>2.5</sub> precursors. This final rule became effective on July 15, 2008.

### B. *Ozone-Related Actions*

On November 29, 2005, EPA published (70 FR 71612) in the **Federal Register** the “Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2”. Part of this rule established, among other requirements, NO<sub>x</sub> as a precursor to ozone. The final rule became effective on January 30, 2006.

### C. *Indiana’s Actions*

In response to EPA’s actions regarding PM<sub>2.5</sub> and ozone, Indiana began the process to revise its state environmental rules to comply with the new regulations. During the rulemaking process, Indiana promulgated “emergency rules” designed to implement the regulations required by EPA’s PM<sub>2.5</sub>- and ozone-related actions. These emergency rules mirrored in substance the regulations Indiana intended to adopt. On June 11, 2012, Indiana adopted regulations implementing the required PM<sub>2.5</sub> and NO<sub>x</sub> ozone precursor regulations. The revisions to Indiana’s environmental regulations became effective on July 11, 2012.

On July 12, 2012, IDEM sent a letter to EPA requesting EPA’s approval of parts of the revisions made to Indiana’s SIP. These changes define “direct PM<sub>2.5</sub>,” addresses precursors to ozone

and PM<sub>2.5</sub>, and revises existing definitions within Indiana’s SIP to reflect these changes. In the same letter, Indiana requested EPA’s approval to revisions made to its title V operating permit program.

On December 12, 2012, IDEM submitted a second letter to EPA requesting approval of additional revisions to Indiana’s SIP beyond those requested on July 12, 2012. The requested revisions modify provisions related to PM<sub>2.5</sub> class I variances, increment consumption, and baseline dates.

Indiana also made other revisions to its state environmental regulations such as adding language intended to make some regulations clearer while maintaining their current meaning. Since IDEM did not submit these revisions to EPA for approval into the SIP, EPA will not be taking action on them.

### III. What are the revisions that the state submitted for approval?

The revisions IDEM submitted for EPA’s approval implement the PM<sub>2.5</sub> NAAQS, PM<sub>2.5</sub> NSR program and regulations related to NO<sub>x</sub> as a precursor to ozone. The submittal includes a request to approve revisions made to Indiana’s state regulations at 326 Indiana Administrative Code (IAC) 326 IAC 2–2–1, 326 IAC 2–2–4, 326 IAC 2–2–6, 326 IAC 2–2–14, 326 IAC 2–3–1 and 326 IAC 5–1–5.

As part of this submittal, Indiana also requested revisions to 326 IAC 2–1.1–3 establishing exemptions that may apply to new sources, modifications to existing sources, and revisions of existing operating permits. However, these revisions are for regulations EPA had not previously approved into Indiana’s SIP. Since these regulations were not previously approved into the SIP and are not being proposed as a new addition to the SIP, EPA will not be taking action on 326 IAC 2–1.1–3(d)(2)(A), 2–1.1–3(e)(1)(A), and 2–1.1–3(h)(2)(B)(xi) at this time.

Indiana also requested EPA to approve changes to Indiana’s title V program found at 326 IAC 2–7. However, revisions to the title V program should be included as part of a separate title V program submission and not part of a SIP approval. For this reason, EPA will not be taking action on revisions to 326 IAC 2–7–1(21)(E)(vi) and 2–7–1(42)(C)(ii)(FF) in this proposal.

A description and analysis of the SIP revisions for approval follows.

### A. *Rule 326 IAC 2–2–1, Definitions*

Indiana has revised several definitions at 326 IAC 2–2–1. The revisions are summarized in the following paragraphs.

The definition of “major source baseline date” at 326 IAC 2–2–1(ee)(3) adds October 20, 2010, as the major source baseline date for PM<sub>2.5</sub>. This is consistent with 40 CFR 51.166(b)(14)(i)(c).

The definition of “baseline area” at 326 IAC 2–2–1(f)(1) was revised to explicitly identify pollutant air quality impacts that would define a baseline area where a minor source baseline date is already established. This revision is consistent with 40 CFR 51.166(b)(15)(i).

Indiana’s revision of “minor source baseline date” at 326 IAC 2–2–1(gg)(1)(c) establishes October 20, 2011, as the trigger date for PM<sub>2.5</sub>. This is consistent with 40 CFR 51.166(b)(14)(ii)(c).

The previously listed revised definitions are consistent with definitions found at 40 CFR 51.166(b). EPA finds the revisions to 326 IAC 2–2–1 approvable.

### B. *Rule 326 IAC 2–2–4, Air Quality Analysis; Requirements*

Indiana revised 326 IAC 2–2–4(b)(2)(A)(vi) requiring ozone ambient air quality data to be provided if the net increase of NO<sub>x</sub> is more than 100 tons per year. Because this revision is consistent with 40 CFR 51.166(i)(5)(i)(f), EPA approved it on October 29, 2012 (77 FR 65478). However, this revision was incorrectly cited as 326 IAC 2–2–4(b)(2)(vi). EPA is correcting the citation with this action.

Indiana also revised 326 IAC 2–2–4(c)(4) by allowing an owner or operator of a proposed major stationary source or major modification of volatile organic compounds (VOC) or NO<sub>x</sub> who satisfies all conditions of 40 CFR part 51, appendix S, section IV, to provide post-approval monitoring data for ozone in lieu of preconstruction data. This revision differs from the regulation found at 40 CFR 51.166(m)(1)(v), which allows a SIP to authorize the submission of post-approval monitoring data for ozone in lieu of providing preconstruction data for VOC but not NO<sub>x</sub>. However, NO<sub>x</sub> and VOC are both considered ozone precursors under PSD regulations.<sup>1</sup> 326 IAC 2–2–4(c)(4), as revised, allows the submission of both VOC and NO<sub>x</sub> post-approval monitoring

<sup>1</sup> For example, in the preamble to “Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 2” (70 FR 71612), EPA includes NO<sub>x</sub> as an ozone precursor, citing its role in ozone formation and transport.

data only when evaluating their impact as ozone precursors. This revision does not create an exclusion for NO<sub>x</sub> with regard to preconstruction monitoring for other applicable NAAQS, such as the NO<sub>2</sub> NAAQS or the PM<sub>2.5</sub> NAAQS. Because the option to provide NO<sub>x</sub> post-approval data in lieu of preconstruction monitoring data is narrowly restricted to its role as an ozone precursor, EPA finds this revision to be approvable.

#### C. Rule 326 IAC 2–2–6, Increment Consumption; Requirements

Indiana has revised 326 IAC 2–2–6(b) by adding allowable PM<sub>2.5</sub> increments as listed in 40 CFR 51.166(c)(1). Other revisions to 326 IAC 2–2–6(b) which do not change the overall meaning of the regulation include changing the word “such” to “the” and abbreviating “particulate matter” as “PM.” EPA finds this revision to be approvable.

#### D. Rule 326 IAC 2–2–14, Sources Impacting Federal Class I Areas; Additional Requirements

Indiana revised 326 IAC 2–2–14(e) by adding class I variances for PM<sub>2.5</sub>. This revision is consistent with 40 CFR 51.166(p)(4). EPA finds this revision to be approvable.

#### E. Rule 326 IAC 2–3–1, Definitions

The definition of “regulated NSR pollutant” at 326 IAC 2–3–1(mm)(3) identifies ozone and PM<sub>2.5</sub> precursors in nonattainment areas. This change is consistent with 40 CFR 51.165(a)(1)(xxxvii). EPA finds this revision to be approvable.

The definition of “significant” at 326 IAC 2–3–1(pp) has also been revised by adding the significant emission rate for PM<sub>2.5</sub> and by changing the phrase “oxides of nitrogen” to “nitrogen oxides.” This change is consistent with 40 CFR 51.165(a)(1)(x). EPA finds this revision to be approvable.

#### F. 326 IAC 5–1–5, Violations

326 IAC 5–1–5(b)(1)(E) requires owners and operators to submit, as part of the petition requesting alternate opacity limits, applicable particulate matter limits. Under the currently approved SIP, the only applicable particulate matter limits are those associated with PM and PM<sub>10</sub>, but not PM<sub>2.5</sub>. Indiana has revised 326 IAC 5–1–5(b)(1)(E) to require owners and operators of sources and facilities seeking alternate opacity limits to submit PM, PM<sub>10</sub>, or PM<sub>2.5</sub> limits. EPA finds this revision approvable because the revised SIP provision is more stringent since it now requires PM<sub>2.5</sub> limits to be submitted with petitions requesting alternate opacity limits.

#### IV. What action is EPA taking?

EPA is proposing to approve revisions to Indiana’s SIP that implements a portion of the PM<sub>2.5</sub> requirements and also incorporates NO<sub>x</sub> as an ozone precursor. These revisions were made to meet EPA’s requirements for Indiana’s PSD and NSR program and are consistent with Federal regulations. Specifically, EPA is proposing to approve the following:

- (i) 326 IAC 2–2–1(ee)(3);
- (ii) 326 IAC 2–2–1(f)(1);
- (iii) 326 IAC 2–2–1(gg)(1)(c);
- (iv) 326 IAC 2–2–4(b)(2)(A)(vi);
- (v) 326 IAC 2–2–4(c)(4);
- (vi) 326 IAC 2–2–6(b);
- (vii) 326 IAC 2–2–14(e);
- (viii) 326 IAC 2–3–1(mm)(3);
- (ix) 326 IAC 2–3–1(pp); and
- (x) 326 IAC 5–1–5(b)(1)(E).

EPA is taking no action with respect to 326 IAC 2–1.1–3(d)(2)(A), 326 IAC 2–1.1–3(e)(1)(A), and 326 IAC 2–1.1–3(h)(2)(B)(xi) because Indiana requested EPA to take action on revisions made to the state’s regulations that were not previously approved into Indiana’s SIP. If Indiana requests in the future that EPA take action with respect to these regulations as part of a separate SIP submission, EPA will do so at that time.

EPA is taking no action with respect to the revisions made to Indiana’s title V program at 326 IAC 2–7–1(21)(E)(vi) and 326 IAC 2–7–1(42)(C)(ii)(FF) because the title V program is approved as a program separate from Indiana’s SIP. EPA will take action on the revisions to Indiana’s title V program as part of a title V program submission.

#### V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- 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);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 21, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

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