

(d)(4) through (g) [Reserved]. For further guidance see § 20.2056(b)-7(d)(4) through (g).

(h) *Examples*. [Reserved]. See § 20.2056(b)-7(h).

*Example 1 through Example 5*. [Reserved]. For further guidance, see § 20.2056(b)-7(h) *Example 1 through Example 5*.

*Example 6*. (i) [Reserved]. For further guidance, see § 20.2056(b)-7(h) *Example 6*.

(ii) D's estate tax return is due after February 18, 1997. D's will established a trust providing that S is entitled to receive the income from that portion of the trust that the executor elects to treat as qualified terminable interest property. S's interest in the trust otherwise meets the requirements of a qualifying income interest for life under section 2056(b)(7)(B)(ii). Accordingly, the executor may elect qualified terminable interest treatment for any portion of the trust.

Par. 4. Section 20.2056(b)-10T is added to read as follows:

**§ 20.2056(b)-10T Effective dates (temporary).**

In addition to the effective dates set out in § 20.2056(b)-10, § 20.2056(b)-7T(d)(3)(ii) is effective with respect to estates of decedents dying after March 1, 1994. For further guidance, see § 20.2056(b)-10.

Margaret Milner Richardson,  
Commissioner of Internal Revenue.

Approved: January 8, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97-3398 Filed 2-14-97; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[IN68-1-7308a; FRL-5678-5]

**Approval and Promulgation of Implementation Plans; Indiana**

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

**ACTION:** Direct final rule.

**SUMMARY:** On October 25, 1994, the Indiana Department of Environmental Management (IDEM) submitted revisions to its State Implementation Plan (SIP). EPA made a finding of completeness in a letter dated November 25, 1994. The revisions to the SIP add or revise definitions in the Indiana SIP's general provisions (326 IAC 1-1, 326 IAC 1-2), the applicability criteria of the rule for malfunctions (326 IAC 1-6), and the applicability criteria for state construction and operating permit requirements (326 IAC 2-1). The revisions to the SIP also revise Indiana's

construction permit program (326 IAC 2-1) and its "Permit no defense" regulation (326 IAC 2-1). With this rule, EPA is approving these SIP revisions because they are in compliance with the Code of Federal Regulations (CFR) and the Clean Air Act (Act). Elsewhere in this Federal Register, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final rule and address the comments received in a new final rule. Unless this direct final rule is withdrawn, no further rulemaking will occur on this requested SIP revision.

**DATES:** This action will be effective April 21, 1997 unless adverse or critical comments are received by March 20, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886-6082, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

**FOR FURTHER INFORMATION CONTACT:** Alvin Choi, EPA (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3507.

**SUPPLEMENTARY INFORMATION:**

I. Background

IDEM submitted revisions to the Indiana SIP on October 25, 1994. The revisions included rule changes to the State's permit review rules and adoption of the federally enforceable state operating permits program (326 IAC 2-8), source specific operating agreements (326 IAC 2-9), and enhanced new source review (NSR) rules (326 IAC 2-1-3.2). EPA has already promulgated its approval of regulations governing federally enforceable state operating permits and enhanced new source review rules (60 FR 43099) and the source specific operating agreements (61 FR 14487). The EPA is now proposing to approve the final portion of the October 25, 1994 SIP submittal which alters some prefatory language and affects applicability of some rules. The EPA is approving the following revisions to Title 326 of the Indiana

Administrative Code (326 IAC)—Article One: General Provisions, Rule One: Sections 2 and 3; Rule Two: Sections 2, 4, 12, 33.1, 33.2, 33.5; Rule Six: Section 1. The EPA is also approving revisions to 326 IAC—Article Two: Permit Review Rules, Rule One: Sections 1, 3, and 10. The purpose of this revision is to update and revise the SIP to reflect statutorily-mandated changes to the permit programs. The rationale for EPA's approval is summarized in this rule. A more detailed analysis is set forth in a technical support document which is available for inspection at the Region 5 Office listed above.

II. Summary of State Submittal

The following sections of Article One, Rule One have been revised to include recent amendments to the Act and the CFR.

*326 IAC 1-1-2 References to Federal Act*

This section was revised specifically to reference the Clean Air Act Amendments of 1990 because the SIP incorporated changes required by the 1990 Amendments.

*326 IAC 1-1-3 References to the Code of Federal Regulations*

This section updates the reference to the CFR from the 1989 edition to the 1992 edition and specifically references the July 21, 1992 Federal Register with regard to 40 CFR Part 70.

The following sections of Article One have been revised to include new definitions and revisions to existing regulations.

*326 IAC 1-2-2 "Allowable emissions" Definition*

The previous definition calculated an allowable emission rate by combining the most stringent of three listed criteria with the maximum rated capacity of the facility (unless the facility was subject to a limit on the operating rate or hours of operation, or both). This definition has been expanded to include potential emissions and daily emission rates for noncontinuous batch manufacturing operations.

*326 IAC 1-2-4 "Applicable state and federal regulations" Definition*

This section has been revised to clarify that this definition includes rules adopted under 326 IAC by the air pollution control board, all regulations included in the CFR by EPA, and specific requirements established by the Act.

*326 IAC 1-2-12 "Clean Air Act"**Definition*

This section was updated to include a reference to the Clean Air Act Amendments of 1990. The previous definition made only a general reference to the Act.

*326 IAC 1-2-33.1 "Grain elevator"**Definition*

This new section was added to define the term used in 326 IAC 2-9-2 (Source specific restrictions and conditions). A "Grain elevator" is defined as "an installation at which grains are weighed, cleaned, dried, loaded, unloaded, and placed in storage."

*326 IAC 1-2-33.2 "Grain terminal elevator" Definition*

This new section was added to define the term used in 326 IAC 2-1-7.1 (Fees for registration, construction permits, and operating permits). A "Grain terminal elevator" is defined as any grain elevator which has a capacity greater than 2,500,000 U.S. bushels certified storage or 10,000,000 U.S. bushels annual grain throughput, which is the total amount of grain received or shipped by the grain elevator over the course of a calendar year.

*326 IAC 1-6-1 "Applicability of rule"*

The owner or operator of any facility with the potential to emit at a specified emission rate, and the owner or operator of a facility with malfunctioning emission control equipment, either of whose facilities could cause emissions in excess of stated emission rates, were formerly subject to the malfunction rule. The revised section revokes the previous applicability criteria and subjects the owner or operator of any facility which is required to obtain a permit under 326 IAC 2-1-2 (Registration) or 326 IAC 2-1-4 (State Operating permits) to the malfunction rule.

The following Sections of Article 2 revise the existing regulations.

*326 IAC 2-1-1 "Applicability of rule"*

This section determines the applicability of permit and fee requirements for, among other things, persons proposing to construct or modify sources, including sources in Lake and Porter Counties. One of the principle revisions to 326 IAC 2-1-1 is the universal replacement of the term "potential emissions" by "allowable emissions". This modification will presumably ease the State's burden in administering its air permit program by removing certain smaller sources from required review.

EPA approves this revision to encourage the state's effective

administration of its permit program. EPA notes that Indiana's regulations regarding Prevention of Significant Deterioration (PSD) and NSR employ the term "potential emissions" in determining the applicability of those programs, and thus these revisions do not affect the applicability of those programs to any sources. Correspondence with the state confirms these conclusions.

A revision to this rule provides that the state operating permit program (326 IAC 2-1-4) does not apply if the source has an enforceable operating permit under 326 IAC 2-9. Also, an additional revision subjects to this rule any person planning to construct or operate grain terminal elevators.

The revised rules have added three criteria for determining applicability of SIP provisions. The first added criteria regulates any modification which will increase emissions of particulate matter with an aerodynamic diameter less than or equal to 10 micrometers by 15 tons per year. The second criteria includes, under the regulations, any source or facility with aggregate emissions greater than or equal to 10 tons per year of any single hazardous air pollutant (HAP) or 25 tons per year for any combination of HAPs. The third requirement includes modifications to major sources of HAPs which will increase emissions by four tons per year of any single HAP or 10 tons per year of any combination of HAPs. The third requirement also exempts any source which can demonstrate by written submission that the sum of the emission increases and decreases of any single HAP resulting from the modification does not exceed four tons per year. The third applicability criteria becomes effective only after Indiana's Part 70 program becomes effective.

Exemptions to the applicability regulations have been adopted. The first category of excluded sources includes existing sources or sources proposed to be operated, constructed, or modified, which have emissions of less than the emission limits specified in the provisions regarding either: (1) applicability of registration requirements found at 326 IAC 2-1-1(b)(2); or (2) applicability of requirements governing the construction permits, enhanced NSR, operating permits, and fees. The second category exempts existing sources who seek only changes in a method of operation, a reconfiguration of existing equipment or other minor physical changes, or a combination of the above which does not increase emissions in excess of: (1) Significance levels in PSD limitations and emissions offsets; (2) HAP levels for

maximum achievable control technology; (3) specific threshold levels adopted for Lake and Porter Counties; (4) levels specified in provisions governing the applicability of regulations for construction permits, enhanced NSR, operating permits, and fees (not including the general 25 tons per year criteria); and (5) levels specified for the volatile organic compound rules. The third category exempts temporary operations and experimental trials which involve construction, reconstruction, or modification which meet specific criteria.

*326 IAC 2-1-3 Construction permits*

This revision eliminates the need for the submission of plans and specifications to be prepared by a professional engineer registered to practice in Indiana, with an application for a construction permit. The applicant, however, is now required to place a copy of the permit application for public review at a library in the county where construction is proposed. Finally, the revision requires any applicant who proposes to construct upon land which is underdeveloped or for which a valid existing permit has not been issued, to make a reasonable effort to provide notice to all owners or occupants of land adjoining the proposed construction site.

*326 IAC 2-1-10 Permit no defense*

This section states that a permit which is obtained by a source shall not be used as a defense against a violation of any regulation. An exception has been added for alleged violations of applicable requirements for which a permit shield has been granted according to 326 IAC 2-1-3.2 (Enhanced NSR) and 326 IAC 2-7-15 (Part 70 permit program; Permit shield).

The EPA is approving the revisions to the sections in 326 IAC Articles 1 and 2. These revisions add definitions which reflect new regulations added to the title and revise existing regulations which have been found to be in accordance with the CFR and the Act.

**III. Rulemaking Action**

Many of the revisions to the General Provisions updated definitions with respect to the 1990 Clean Air Act Amendments. Revisions were also in response to the recent addition of the Source Specific Operating Agreement program.

The changes to the Permit Review Rules are presumably intended to alleviate the permitting burden on IDEM. By using the "allowable" definition and adding exemption

regulations in 326 IAC 2-1-1, IDEM will be able to concentrate its resources on relatively more significant sources. For the reasons stated above, the EPA approves the plan revisions submitted on October 25, 1994, to incorporate changes to existing regulations and to accommodate recent revisions to the SIP by adding and updating regulations.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on April 21, 1997 unless, by March 20, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 21, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively,

EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. EPA*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 21, 1997. 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, Hydrocarbons, Incorporation by reference, Lead, Particulate matter, Sulfur dioxide, Volatile organic compounds.

Dated: December 12, 1996.  
Valdas V. Adamkus,  
Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended to read as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

**Subpart P—Indiana**

2. Section 52.770 is amended by adding paragraph (c)(109) to read as follows:

**§ 52.770 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

(109) On October 25, 1994, the Indiana Department of Environmental Management requested a revision to the Indiana State Implementation Plan in the form of revisions to the General Provisions and Permit Review Rules intended to update and add regulations which have been affected by recent SIP revisions, and to change regulations for streamlining purposes. This revision took the form of an amendment to Title 326: Air Pollution Control Board of the Indiana Administrative Code (326 IAC) 1-1 Provisions Applicable Throughout Title 326, 1-2 Definitions, 1-6 Malfunctions, 2-1 Construction and Operating Permit Requirements.

(i) *Incorporation by reference.* 326 IAC 1-1-2 and 1-1-3, 326 IAC 1-2-2, 1-2-4, 1-2-12, 1-2-33.1, and 1-2-33.2, 326 IAC 1-6-1, 326 IAC 2-1-1, 2-1-3, and 2-1-10. Adopted by the Indiana Air Pollution Control Board March 10, 1994. Filed with the Secretary of State May 25, 1994. Effective June 24, 1994. Published at Indiana Register, Volume 17, Number 10, July 1, 1994.

\* \* \* \* \*

[FR Doc. 97-3865 Filed 2-14-97; 8:45 am]