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. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 29, 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 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 17, 2001

William W. Rice,

Acting Regional Administrator, Region 7.

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 AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for ''10–6.400'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	Missouri Department of Natural Resources			
*	* * * *	*		*
	Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control regulations for the State of Missouri			
*	* * * *	*		*
10–6.400	Restriction of Emission of Particulate Matter From Industrial Processes	09/30/01	11/30/01	
*	* * * *	*		*

* * * * *

[FR Doc. 01–29650 Filed 11–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN122–1a; FRL–7107–9]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Indiana Department of Environmental Management (IDEM) submitted a revised opacity rule on October 21, 1999, as a requested revision to its State Implementation Plan (SIP). The revisions amend portions of Indiana's opacity rule concerning the startup and shutdown of operations, terminology used in discussing averaging periods, time periods for temporary exemptions, alternative opacity limits, and conflicts between visible emission readings and continuous opacity monitor (COM) data.

A major new component of this rule authorizes the State to incorporate source-specific startup and shutdown provisions into federally enforceable operating permits for certain utility boilers, as long as those provisions fall within a range established in the rule. Indiana provided a modeling analysis showing that the revised startup and shutdown provisions will not have an adverse impact on air quality. In addition, the revisions clarifying averaging periods and resolving conflicts between monitored and visual opacity readings will aid enforcement of the opacity rule.

DATES: This rule is effective on January 29, 2002, unless the EPA receives relevant adverse written comments by December 31, 2001. If adverse comment is received, the EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Indiana's submittal at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

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I. What Is the EPA Approving?

The EPA is approving revisions to Indiana's opacity rule. IDEM submitted this revised opacity regulation to the EPA on October 21, 1999, as a requested revision to its SIP. The revisions address applicable requirements concerning the startup and shutdown of operations, the terminology used in discussing averaging periods, time periods for temporary exemptions, alternative opacity limits, and conflicts between visible emission readings and COM data. The boiler startup and shutdown revisions satisfy the Clean Air Act requirements and the EPA policy on such provisions. Other rule revisions aid the enforcement of the opacity rules.

II. What Are the Changes From the Current Rules?

The State's submission revises several sections of Indiana's opacity rule, 326 IAC Article 5. The revisions involve permanent alternative opacity limits (AOLs) for utility boilers, conflicts between COM data and visible emission readings, clarification of averaging periods, temporary AOLs for non-boiler sources, and exemptions for sources with consolidated Title V permit limits.

A. Provisions for Utility Boilers

The major new component of these revisions allows certain utility boilers to obtain source-specific AOLs during startup and shutdown periods in their federally enforceable operating permits. The AOL must fall within a range established in the rule, 326 IAC 5–1–3(e). This provision is for power plants using coal-fired boilers and electrostatic precipitators (ESPs).

B. Conflicts Between COM Data and Visual Opacity Readings

The current SIP version states that if there is a conflict between opacity readings recorded by a COM and those taken by a human observer, the COM data will prevail. The EPA requested this rule be revised to make enforcement easier. Indiana revised the rule, 326 IAC 5–1–4(b), to state that data from either a COM or a human observer may be used to show a violation of opacity limits. The basis for this change is that there are certain instances in which opacity readings from an observer may be more accurate than those from a COM. For example, sulfur in a high-temperature gas stream exists in a gaseous state inside a smokestack and would not register on a COM. Once the gas stream comes in contact with the atmosphere, however, chemical reactions and cooling occur, causing visible emissions which can be seen by an observer.

C. Clarification of Averaging Periods

The current version of this rule, 326 IAC 5–1–2, states that the limits are not to be exceeded ''in 24 consecutive readings'' with readings taken every 15 seconds. The revised rule states that the limits are not to be exceeded in ''any one 6-minute averaging period.'' The limits themselves are unchanged. Indiana made a similar clarification of time averaging periods for temporary AOLs. Under 326 IAC 5–1–3(a) and (b), Indiana may provide temporary AOLs to certain sources for startup, shutdown, and ash removal. Both of these revisions improve the ability to enforce the rule by making it clearer and more consistent with the opacity test method. The test method (40 CFR 60, Appendix A, Method 9) calls for opacity readings to be taken by an observer every 15 seconds, and for these readings to be averaged on a 6-minute basis.

D. Temporary Alternative Opacity Limitations for Non-Boiler Sources

New provisions in 326 IAC 5–1–3(c) authorize Indiana to grant temporary AOLs to non-boiler sources. These sources now may apply for a short-term opacity AOL for startup, shutdown, and ash removal situations. IDEM will submit any temporary AOLs to the EPA as site-specific SIP revisions. The EPA will review them for compliance with Clean Air Act requirements and EPA policy. This rule revision does not directly effect any SIP emissions limits.

E. Opacity Limit Exemptions for Title V Sources.

Indiana's rule had provided an exemption from opacity limits for any source with a specific opacity limit in a Title V permit. The rule, 326 IAC 5–1–1, allowed sources to consolidate multiple limits into a single limit in the Title V permit. This is known as ''streamlining.'' The EPA had informed Indiana that the exemption was inappropriate because it had impermissibly suggested that Title V permits could create SIP exemptions. As a result, Indiana removed the exemption from 326 IAC 5–1–1.

III. What Is the EPA's Analysis of the Supporting Materials?

The EPA used the September 20, 1999, memorandum entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' to evaluate the exemptions provisions in 326 IAC 5–1–3(e). To be approved, the provisions must meet the seven requirements in this memorandum. The requirements are:

1. The revision must be limited to specific, narrowly-defined source categories using specific control strategies;
2. Use of the control strategy for this source category must be technically infeasible during startup or shutdown periods;
3. The frequency and duration of operation in startup or shutdown mode must be minimized;
4. As part of its justification of the SIP revision, the state should analyze the potential worst-case emissions that could occur during startup and shutdown;
5. All possible steps must be taken to minimize the impact of emissions during startup and shutdown on ambient air quality;
6. At all times, the facility must be operated in a manner consistent with good practice for minimizing emissions;
7. The owner or operator's actions during startup and shutdown periods must be documented by properly signed, concurrent operating logs, or other relevant evidence;

Indiana has met all seven requirements. Language in Indiana's rules meets requirements three, five, six, and seven. An October 10, 2001, letter from IDEM states that the AOL will only be given to 22 power plants using coal-fired boilers with ESPs. This satisfies the first requirement. IDEM supplied technical documentation on the infeasibility of ESPs during startup and shutdown to meet requirement two. Indiana provided modeling analysis of the potential worst case emissions to meet the fourth requirement, as discussed in section IV below.

In addition to the supporting material for the exemptions in 326 IAC 5–1–3(e), Indiana provided support for its other opacity revisions. Revised language in 326 IAC 5–1–2 clarifies the averaging period for opacity level readings. The averaging period is now ''any one (1) six (6) minute averaging period.'' The former limit of ''twenty-four (24) consecutive readings'' (readings are taken every 15 seconds) was revised to aid enforcement of the opacity rules. Indiana also submitted revisions to 326 IAC 5–1–3 (a), and (b) which provide sources short-term temporary alternate opacity limits for startup, shutdown, and ash blowing. The AOLs in sections (a) will now be granted for up to ''two (2) six (6) minute averaging periods'' in any twenty-four hour period. Previously, the limit was stated as ''twelve (12) continuous minutes.'' Section (b) similarly changes a ''six (6) continuous minutes'' to ''one (1) six (6) minute'' averaging period. The 326 IAC 5–1–3 (a) and (b) revisions also aid rule enforcement.

Indiana also revised 326 IAC 5–1–3 (c) to include non-boiler sources located outside of Lake County with similar AOLs to those of 326 IAC 5–1–3 (a) and (b). Language in 326 IAC 5–1–1 allowing an opacity limits exemption for any source with a specific opacity limit in a Title V permit was removed. This exemption was removed because it had impermissibly suggested that Title V permits could create SIP exemptions.

Indiana held two public hearings on the opacity rule revisions, giving interested parties an opportunity to comment. It held the first public hearing on December 3, 1997 and the second on June 3, 1998. Transcripts of the public hearing are included in the submittal. Representatives from electric utilities, a university, and a cement company made comments at the hearings. These comments were generally supportive of the rule revisions. There were two commentors who expressed concern about 326 IAC 5–1–4(b). This section addresses conflicts between visual opacity readings and those taken with a COM. Indiana further revised this section in response to the comments. Section 5–1–4(b) now states that either visual or COM readings may be used. The method decision will be made based on which method is determined to be most accurate given the case-specific circumstances. Considering the comments made during the two hearings and how Indiana addressed the comments, the EPA does not anticipate receiving any adverse comments on this matter.

IV. What Are the Environmental Effects of These Alternative Limits in 326 IAC 5–1–3?

Indiana submitted a modeling analysis aimed at assessing the worst-case impact of the alternate limits in 326 IAC 5–1–3(e). This modeling analysis addresses the fourth requirement of EPA's September 20, 1999 policy. Of the 22 eligible facilities, IDEM modeled PSI Energy's power plant in Edwardsport because it has the shortest stacks (183 feet) and the most significant impact from building downwash. A conservative emissions rate was calculated by estimating uncontrolled emissions under full-load operating conditions for a conservative eight-hour startup period. IDEM developed a conservative estimate of background concentrations in the area of the Edwardsport plant. It showed that application of this background value to the other relevant power plants (none of which is in the Lake County non-attainment area) would provide a similar degree of conservatism.

Indiana used five years of meteorological data. The Edwardsport modeling results show an ambient particulate matter of 10μm or less in diameter (PM–10) concentration of 98.6 $\mu g/m^3$, well below the 24-hour average PM–10 standard of 150 $\mu g/m^3$. Thus, IDEM has demonstrated that the startup and shutdown AOL in 326 IAC 5–1–3 is not expected to cause a violation of the PM–10 air quality standards.

The EPA further examined whether air quality problems could arise from multiple sources operating in startup or shutdown mode simultaneously. With one exception, the relevant power plants are isolated from each other. The one exception is for two facilities in Warrick County. Because the two facilities are about 3 kilometers apart, and because these facilities have significantly higher stacks than the Edwardsport facility, EPA is satisfied that simultaneous operation in startup or shutdown mode at these two facilities will not cause air quality problems. In addition, because operation in startup or shutdown mode (particularly eight hours of such operation) is infrequent, simultaneous operation in these modes at more than one source is unlikely. Consequently, the EPA believes that granting the exemption requested by Indiana will not jeopardize continued attainment of the air quality standards.

V. What Rulemaking Action Is the EPA Taking?

The EPA is approving, through direct final rulemaking, revisions to Indiana's opacity rule. The revised regulation address provisions concerning the startup and shutdown of operations, terminology used in discussing averaging periods, time periods for temporary exemptions, alternative opacity limits, and conflicts between visible readings and COM data.

We are publishing this action without a prior proposal because we view these as noncontroversial revisions and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that serves as the proposal to approve the SIP revision if adverse written comments are filed. This rule will be effective on January 29, 2002 without further notice unless we receive relevant adverse written comments by December 31, 2001. If the EPA receives adverse written comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA does not intend to institute a second comment period. Any parties interested in commenting on these actions must do so at this time.

VI. 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. 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. 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 January 29, 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 8, 2001.

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)(146) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(146) On October 21, 1999, Indiana submitted revised state opacity regulations. The submittal amends 326 IAC 5–1–1, 5–1–2, 5–1–3, 5–1–4(b), and 5–1–5(b). The revisions address provisions concerning the startup and shutdown of operations, averaging period terminology, temporary exemptions, alternative opacity limits, and conflicts between continuous opacity monitor and visual readings.

(i) Incorporation by reference.

Opacity limits for Indiana contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 5: Opacity Regulations. Filed with the Secretary of State on October 9, 1998 and effective on November 8, 1998. Published in 22 Indiana Register 426 on November 1, 1998.

[FR Doc. 01–29648 Filed 11–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IL210–1a; FRL–7111–1]

Approval and Promulgation of State Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a negative declaration submitted by the State of Illinois which indicates there is no need for regulations covering existing Small Municipal Waste Combustors (MWC) in the State of Illinois. The State's negative declaration regarding this category of sources was submitted in a letter dated June 25, 2001, and was based on a systematic search of records and permits. This search resulted in the determination that there are no affected small MWC units in Illinois.

DATES: This rule is effective on January 29, 2002, unless EPA receives adverse written comments by December 31, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the negative declaration is available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone John Paskevicz at (312) 886–6084 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 886–6084.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'', or ''our'' is used we mean EPA.

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I. What is the background for this action?
II. Negative declarations and their justification.
III. EPA review of Illinois' negative declaration.
IV. Administrative Requirements.