



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2011-0968; FRL-9920-15-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans;
Indiana; Open Burning Rule**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a November 14, 2011, request by Indiana to revise the state implementation plan (SIP) to update the open burning provisions in Title 326 of the Indiana Administrative Code (IAC), Article 4, Rule 1 (326 IAC 4-1), Open Burning Rule. This action applies statewide, with the exception of Clark, Floyd, Lake and Porter counties. EPA is approving this rule for attainment counties and is taking no action on the rule for Clark, Floyd, Lake and Porter counties which are nonattainment or maintenance areas for ozone (O₃) or particulate matter (PM).

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2011-0968. All documents in the docket are listed on the www.regulations.gov web site. 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. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through 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 Charles Hatten, Environmental Engineer, at (312)886-6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031, hatten.charles@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 is EPA Addressing in this document?
- II. Public Comments Received and EPA's Response.
- III. What Action is EPA Taking?

IV. Statutory and Executive Order Reviews.

I. What is EPA Addressing in this document?

On September 17, 2014 (79 FR 55641, 79 FR 55712), EPA published a direct final approval of revisions to 326 IAC 4-1, Indiana's open burning rule. The revisions improve and expand the applicability of open burning and its impact on air quality statewide.

On November 5, 2014, EPA withdrew the direct final approval because of an adverse comment (79 FR 65589). In this document EPA is responding to the comment and taking final action to approve Indiana's SIP revision request.

II. Public Comment Received and EPA's Response.

EPA received one adverse comment on the September 17, 2014, proposed approval of this Indiana rule.

Comment: Commenter disagrees with approval of Indiana's open burning rule. Commenter says the wind in Indiana moves in an easterly direction and that fine PM emissions from Indiana contributes to the cause of serious health effects (lung cancer, heart attacks, strokes, asthma, pneumonia, and allergies) for all people breathing the polluted air from Indiana. The commenter also said that the allowance of open burning hurts the nation and raises the concern of huge health costs for people breathing dirty air from Indiana.

EPA Response: EPA agrees that exposure to fine PM may be linked to a number of health related problems. The revision to rule 326 IAC 4-1 strengthens Indiana's existing open burning rule by reducing the amount of open burning allowed to take place in Indiana, thereby reducing the exposure of the general population to PM emissions and minimizing health care costs.

III. What Action is EPA Taking?

EPA is approving the November 14, 2011, request by IDEM to revise Indiana's SIP to update 326 IAC 4-1, Indiana's Open Burning Rule, because reducing open burning will reduce PM, volatile organic compounds, and other pollutants. EPA's action applies statewide, with the exception of Clark, Floyd, Lake and Porter counties. EPA is taking no action in Clark, Floyd, Lake, and Porter counties which are nonattainment or maintenance areas for O₃ or PM.

IV. 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 (Public Law 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).

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Emission Reporting, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: November 24, 2014.

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.770, the table in paragraph (c) is amended by revising the entries under the subheading entitled “Article 4. Burning Regulations” and by adding footnote 1 to the end of the table to read as follows:

§ 52.770 Identification of plan.

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(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
* * * * *				
Article 4. Burning Regulations				
Rule 1. Open Burning ¹				
4-1-0.5	Definitions	02/10/2001	[insert date of publication in the Federal Register], [insert Federal Register citation]	
4-1-1	Scope	02/10/2001	[insert date of publication in the Federal Register], [insert Federal Register citation]	
4-1-2	Prohibition against open burning	02/10/2001	[insert date of publication in the Federal Register], [insert Federal Register citation]	
4-1-3	Exemptions	10/28/2011	[insert date of publication in the Federal Register], [insert Federal Register citation]	
4-1-4	Emergency burning	10/28/2011	[insert date of publication in the Federal Register], [insert Federal Register citation]	
4-1-4.1	Open burning approval; criteria and conditions	12/15/2002	[insert date of publication in the Federal Register], [insert Federal Register citation]	

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
4-1-4.2	Open burning; approval revocation	02/10/2001	[insert date of publication in the Federal Register], [insert Federal Register citation]	
4-1-4.3	Open burning approval; delegation of authority	02/10/2001	[insert date of publication in the Federal Register], [insert Federal Register citation]	
Rule 2. Incinerators				
4-2-1	Applicability	12/15/2002	11/30/2004, 69 FR 69531	
4-2-2	Incinerators	12/15/2002	11/30/2004, 69 FR 69531	
4-2-3	Portable incinerators (Repealed)	12/15/2002	11/30/2004, 69 FR 69531	
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¹ EPA is approving this rule for the counties of Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clay, Clinton, Crawford, Daviess Dearborn, Decatur, De Kalb, Delaware, Dubois, Elkhart, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Hamilton, Hancock, Harrison, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Madison, Marion, Marshall, Martin, Miami, Monroe, Montgomery, Morgan, Newton, Noble, Ohio, Orange, Owen, Parke, Perry, Pike, Posey, Pulaski, Putnam, Randolph, Ripley, Rush, St. Joseph, Scott, Shelby, Spencer, Starke, Steuben, Sullivan, Switzerland, Tippecanoe, Tipton, Union, Vanderburgh, Vermillion, Vigo, Wabash, Warren, Warrick, Washington, Wayne, Wells, White, and Whitley.

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[FR Doc. 2014-28798 Filed 12/08/2014 at 8:45 am; Publication Date: 12/09/2014]