the selection of this alternative is inconsistent with law.

This final rule only approves the incorporation of existing state rules into the SIP and imposes no additional requirements. This rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less then $100 million in any one year. USEPA, therefore, has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Furthermore, because small governments will not be significantly or uniquely affected by this rule, the USEPA is not required to develop a plan with regard to small governments.

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., USEPA 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, USEPA 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 Clean Air Act do not create any new requirements, but simply approve requirements a State has already imposed. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify 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 regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(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 April 9, 1996. 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, Hydrocarbon, Incorporation by reference, Ozone.

Dated: November 21, 1995.

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 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)(101) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(101) On August 25, 1995, Indiana submitted a regulation which reduced the maximum allowable volatility for gasoline sold in Clark and Floyd Counties to 7.8 psi during the summer control period. The summer control period is June 1, to September 15, for retail outlets and wholesale customers, and May 1, to September 15, for all others.

(i) Incorporation by reference. 326 Indiana Administrative Code 13–3 Control of Gasoline Reid Vapor Pressure. Sections 1 through 7. Finally adopted by the Indiana Air Pollution Control Board January 11, 1995. Signed by the Secretary of State July 6, 1995. Effective August 5, 1995. Published at Indiana Register, Volume 18, Number 11, August 1, 1995.

[FR Doc. 96–2826 Filed 2–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IN62–1–7234a; FRL–5342–7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving an August 25, 1995, State request for a site-specific revision to the Indiana sulfur dioxide (SO_2) State Implementation Plan (SIP). This revision amends the SO_2 emission limitations applicable to the Joseph E. Seagram and Sons, Inc. (Seagram), facility in Lawrenceburg, Indiana, so that two boilers may not operate simultaneously on coal or fuel oil. The Seagram facility has essentially operated under these restrictions for several years, thereby emitting less SO_2 than the previous rules had allowed. The incorporation of this restriction into the Indiana SO_2 SIP was deemed to be necessary after dispersion modeling in support of an SO_2 SIP revision for Cincinnati, Ohio predicted violations of the National Ambient Air Quality Standards (NAAQS) for SO_2 in Dearborn County, Indiana, if Seagram were to operate at the previously allowed SO_2 emission rates. The restrictions contained in Indiana's August 25, 1995, submittal will eliminate the predicted violations in Dearborn County, and their approval by USEPA will enable final Federal approval of the Cincinnati, Ohio SO_2 SIP revision.

DATES: This action is effective on April 9, 1996 unless an adverse comment is received by March 11, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and USEPA's analysis (Technical Support Document) are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mary Onischak at (312) 353–5954 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Mary Onischak at (312) 353–5954.

SUPPLEMENTARY INFORMATION:

I. Introduction

Indiana has revised the SO_2 emission limits for the Joseph E. Seagram and Sons, Inc., distillery in Lawrenceburg, Indiana, as codified by the State at 326 Indiana Administrative Code (326 IAC) 7–4–13 (3) (Dearborn County Sulfur Dioxide Emission Limitations), and submitted this rule on August 25, 1995, to USEPA as a site-specific SO_2 SIP revision. The SIP revision limits the use of sulfur-bearing fuels at the Seagram distillery in Lawrenceburg, Indiana, and is intended to address potential

violations of the SO_2 NAAQS in Dearborn County, Indiana. The SIP revision was found complete in a letter dated October 20, 1995.

II. Emission Limitation

In the previously approved SO_2 SIP for Dearborn County, Indiana's rule 326 IAC 7–4–13 limited the emissions at each of Seagram's Boilers 5 and 6 to 1.92 pounds sulfur dioxide per million British Thermal Units (lb/MMBTU). In addition, if Boiler Number 6 was operating on any fuel other than natural gas, the previous rule only allowed Boiler Number 5 to emit 1.07 lb/MMBTU. In response to a January 5, 1994, request by USEPA, Indiana amended 326 IAC 7–4–13(3) to state that when both Boilers 5 and 6 are in operation, only one boiler may use coal or fuel oil. The rule also requires Seagram to keep records of its fuel usage and report this information to the State of Indiana.

III. Relationship to the Hamilton County, Ohio SIP

The need for revisions to Indiana's Dearborn County SO_2 SIP became apparent during USEPA's review of an Ohio SO_2 SIP revision, which had been requested by USEPA on December 22, 1988. On October 18, 1991, the State of Ohio submitted to USEPA the revised SO_2 SIP for Hamilton County, Ohio. Hamilton County, Ohio, is adjacent to Dearborn County, Indiana. In the course of Ohio's SIP development, dispersion modeling was used to evaluate the emissions from significant SO_2 sources in and around Hamilton County, including some sources in Indiana. One of the Indiana sources considered in the Ohio modeling study was the Seagram facility. Ohio's modeling predicted violations of the 3-hour and 24-hour SO_2 standard at receptor points in Dearborn County, Indiana, when Seagram was modeled at its highest allowable SO_2 emission rate in accordance with USEPA guidance; in addition, the Seagram facility was shown to be the main contributor to the modeled violations in Dearborn County.

Seagram's highest allowable emission rate assumed that Boiler Number 5 operated continuously on fuel oil. However, in a letter dated September 1, 1992, Seagram informed Ohio and Indiana that Boiler Number 5, Seagram's standby boiler, had not operated on fuel oil in the previous six years.[1] On January 5, 1994, USEPA requested that Indiana incorporate this restriction into its SO_2 SIP as an enforceable limitation on Seagram's operation.

Because some Hamilton County, Ohio, SO_2 sources also contributed to the modeled violations in Dearborn County, Indiana, USEPA could not approve the Hamilton County, Ohio SO_2 SIP before the modeled violations were fully addressed. Instead, USEPA conditionally approved the Hamilton County, Ohio, SO_2 SIP on August 23, 1994, under the condition that approvable revisions to the Dearborn County, Indiana SO_2 SIP would be submitted to USEPA by September 23, 1995. Indiana met this condition, submitting the Seagram rule revision to USEPA on August 25, 1995. With enforceable boiler use restrictions in the Indiana SIP, the Seagram facility's SO_2 emissions may be included in the Hamilton County SO_2 dispersion modeling study at a lower level than had been assumed previously. Ohio has already modeled the Seagram facility at the lower emissions allowed under the boiler restrictions, and found that the predicted SO_2 NAAQS violations in Dearborn County were eliminated. USEPA has reviewed this modeling and determined that it is acceptable. Federal approval of Indiana's August 25, 1995, SIP revision will therefore enable USEPA to finalize the Hamilton County, Ohio, SO_2 SIP approval.

IV. Final Rulemaking Action

For the reasons discussed above, USEPA is approving 326 IAC 7–4–13(3). Indiana's revised Dearborn County SO_2 rule creates an enforceable restriction on the operations of fossil fuel-fired boilers at the Seagram facility. This rule addresses the potential SO_2 NAAQS violations predicted by an Ohio modeling study, and will provide for attainment of the SO_2 NAAQS in Dearborn County, Indiana.

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this Federal Register publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on April 9, 1996, unless USEPA receives adverse or critical comments by March 11, 1996.

If the USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent Federal Register document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document. Please be aware that the USEPA will institute a second comment period on this action only if warranted by significant revisions to the rulemaking based on comments received in response to this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on April 9, 1996.

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

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.

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to a State, local, and/or tribal government, in the aggregate. The USEPA must also develop a plan with regard to small governments that would be significantly or uniquely affected by the rule.

This rule approves the incorporation into the SIP of an existing State rule which applies only to a single private sector source located in Dearborn County, Indiana. It imposes no additional requirements. To the extent that the rules being approved by this action will impose any mandate upon this source, such a mandate will not result in estimated annual costs of $100 million or more to the source. The rule does not impact any governments.

[1] The company also stated in the letter that it did not intend to operate Boiler Number 5 on fuel oil while Boiler Number 6 was operating on coal or fuel oil, without first notifying and obtaining permission from Ohio and Indiana. USEPA notes that the rule being approved today does not contain any such notification/permission mechanism.

Therefore, no action is required under the Unfunded Mandates Act.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA 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 Clean Air 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, I certify 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 Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(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 April 9, 1996. 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

Air pollution control, Incorporation by reference, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 21, 1995.

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 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)(103) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(103) On August 25, 1995, the State submitted regulations adopted by the Indiana Air Pollution Control Board as part of title 326 of the Indiana Administrative Code for incorporation into the Indiana sulfur dioxide State Implementation Plan.

(i) Incorporation by reference.

(A) 326 Indiana Administrative Code 7–4–13(3); Dearborn County sulfur dioxide emission limitations; effective May 18, 1995. Published in the *Indiana Register*, Volume 18, Number 9, June 1, 1995.

[FR Doc. 96–2832 Filed 2–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[NE–8–1–7206a; FRL–5344–2]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The state of Nebraska operates a Federally approved State Implementation Plan (SIP) that includes a Class II operating permit program for minor sources (those not subject to Title V). This revision will clarify and strengthen the Class II operating permit program and other miscellaneous rule changes.

DATES: This action is effective April 9, 1996 unless by March 11, 1996 adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: In February 1994, the state of Nebraska submitted an SIP revision to create a Class II operating permit program for minor sources (those not subject to Title V). This revision became effective on March 6, 1995 (see 60 FR 372–375).

During the period after the initial state submission, the state proposed several miscellaneous revisions to clarify and strengthen the Class II operating permit program. These revisions were adopted by the Environmental Quality Council on December 2, 1994, and signed by the Governor on May 29, 1995. The state subsequently requested a revision to the SIP on June 14, 1995, under the signature of Randolph Wood, designee of the Governor. This rulemaking addresses those revisions.

Additionally, in a rulemaking published on January 4, 1995 (60 FR 372), one chapter of the state's regulations was inadvertently not submitted with the incorporation by reference material. Thus, this rulemaking now incorporates Chapter 25, ''Nitrogen Oxides (Calculated as Nitrogen Dioxide); Emissions Standards for Existing Stationary Sources'' of Title 129.

Significant Features of the SIP Revision

A. Modifications for Class II and Construction Permits

1. Consistent with Federal regulations, the state now exempts sources subject only to 112(r) of the Act from the responsibility to obtain a Class II operating permit (5:002.02C). (Section 112(r) requires prevention of accidental release plans.) Sources subject to 112(r) are still required to comply with that section's provisions but will not be required to also obtain a state permit. This relieves approximately 500 sources, otherwise not regulated under the Act, from obtaining Class II permits.

2. The state has revised Title 129 to provide that Class II sources have the same exemptions and mechanisms for meeting the requirement to obtain an operating permit available to them as do Class I (Title V) sources in 5:003:01 and 02. These changes are necessary because those provisions in the previous rule language did not specify Class II sources, and the change makes the rule consistent for both classes of sources.

3. Pursuant to Title V, the state has developed a list and criteria for insignificant activities for Class I permits as referenced in 7:006.03. The state has revised its rules in 7:007.07 to also allow exclusion of insignificant activities from Class II permit applications.

Without the development of a list that can be used for Class II sources, emissions information would be