

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 March 18, 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 25, 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 as follows:

PART 52—[AMENDED]

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

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

2. Section 52.770 is amended by adding paragraph (c)(110) to read as follows:

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(110) On November 21, 1995, and February 14, 1996, Indiana submitted Municipal Solid Waste (MSW) Landfill rules for Clark, Floyd, Lake, and Porter Counties as a revision to the State Implementation Plan. This rule requires MSW landfills that emit greater than fifty-five tons per day of non-methane organic compound, or that have a minimum design capacity of one hundred eleven thousand tons (one hundred thousand megagrams) of solid waste, to install a landfill gas collection and control system that either incinerates the gas or recovers the gas for energy use.

(i) *Incorporation by reference.* 326 Indiana Administrative Code 8-8 Municipal Solid Waste Landfills, Section 1 Applicability, Section 2 Definitions, Section 3 Requirements; incorporation by reference of federal standards, Section 4 Compliance deadlines. Adopted by the Indiana Air Pollution Control Board July 12, 1995. Filed with the Secretary of State December 19, 1995. Published at Indiana Register, Volume 19, Number 5, February 1, 1996. Effective January 18, 1996.

[FR Doc. 97-1080 Filed 1-16-97; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[IN63-1a; FRL-5663-1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 21, 1995, and February 14, 1996, the State of Indiana submitted rules for the control of volatile organic liquid (VOL) storage operations in Clark, Floyd, Lake, and Porter Counties as a requested State Implementation Plan (SIP) revision. This rule is part of the State's 15 percent (%) Rate of Progress (ROP) plan to control Volatile Organic Compounds (VOC) emissions in Clark and Floyd Counties, and is included in the VOC contingency plan for Lake and Porter Counties. In addition, this rule is intended to satisfy Clean Air Act (Act) requirements to adopt VOC Reasonably Available Control Technology (RACT) rules for non-Control Techniques Guidelines (CTG) sources in Clark, Floyd, Lake, and Porter Counties. Emissions of VOC react with nitrogen oxides in sunlight to form ground-level ozone, commonly known as smog. Exposure to high ozone concentrations causes respiratory irritation, especially to children, seniors, and people with asthma and other respiratory problems. Indiana expects that the control measures specified in this VOL storage SIP will reduce VOC emissions by 2,620 pounds per day (lbs/day) in Lake and Porter Counties and 142 lbs/day in Clark and Floyd Counties. In this action, EPA is approving Indiana's rule as a direct final action; the rationale for this approval is set forth below. 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 and address the comments received in a new final rule. Unless this direct final is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective March 18, 1997 unless adverse comments are received by February 18, 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, Air Programs 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:

Mark J. Palermo, Air Programs Branch (AR-18J) (312) 886-6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act requires all moderate and above ozone nonattainment areas to achieve a 15% reduction of 1990 emissions of VOC by November 15, 1996. In Indiana, Lake and Porter Counties are classified as "severe" nonattainment for ozone, while Clark and Floyd Counties are classified as "moderate" nonattainment. As such, these counties are subject to the 15% ROP requirement.

The Act specifies under section 182(b)(1)(C) that the 15% emission reduction claimed under the ROP plan must be achieved through the implementation of control measures through revisions to the SIP, the promulgation of federal rules, or the issuance of permits under Title V of the Act, by November 15, 1996. Control measures implemented before November 15, 1990, are precluded from counting toward the 15% reduction.

In addition, section 172(c)(9) requires moderate and above areas to adopt contingency measures by November 15, 1993. The General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (April 28, 1992, 57 FR at 18070), states that the contingency measures generally must provide reductions of 3% from the 1990 base-year inventory. While all contingency measures must be fully adopted rules or measures, the State can use these measures in two different ways. First, the State can use its discretion to implement a measure it wants before 1996. Alternatively, the State may decide not to implement a measure until the area has failed to either meet the 15% ROP requirement or attain the national ambient air quality standards. In that situation, the reductions must be achieved in the year following that in which the failure has been identified by the State.

Besides ROP and contingency plan requirements, section 182(b)(2) of the Act requires States to adopt RACT rules

for all areas designated nonattainment for ozone and classified as moderate or above.¹ There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the amended Act of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG.²

Section 183 of the amended Act requires EPA to issue post-enactment CTGs for thirteen source categories. CTGs were published by this date for four source categories—Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors, SOCMI Distillation, Wood Furniture Coating, and Shipbuilding and Ship Repair Coating; however, the CTGs for the remaining source categories have not been completed. To address State requirements regarding post-enactment CTG source categories for which a CTG has not yet been published, the EPA created a CTG document as Appendix E to the General Preamble. In Appendix E, EPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs EPA expected to issue to meet the requirement in section 183 of the Act. One of the expected CTGs included on this list was to cover VOL storage tanks. Appendix E states that if EPA fails to issue CTGs for any of the post-enactment CTG source categories by November 15, 1993, the responsibility shifts to the State to submit a non-CTG RACT rule for those source categories.

In October 1993, EPA issued a draft CTG for VOL storage tanks. However, EPA decided not to finalize the CTG and, instead, issued in January 1994, a document entitled "Alternative Control Techniques (ACT) Document: Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks", to assist states in developing rules for controlling emissions from VOL storage. In addition, EPA has adopted a New Source Performance Standard (NSPS) for VOL storage operations in 40 CFR 60, subpart Kb, which contains the same

level of control identified in the draft CTG and ACT. Both the draft CTG and the ACT contain a draft model rule for use by the States in developing the SIP revisions.

To comply with 15% ROP plan, contingency measure, and non-CTG RACT requirements, Indiana has submitted, as a requested revision to the SIP, Rule 326 IAC 8-9 for the control of VOL storage operations in Lake, Porter, Clark, and Floyd Counties. The rule is included as a control measure in the 15% ROP plan for Clark and Floyd Counties and is included as a contingency measure for Lake and Porter Counties' contingency plan. (Rulemaking on the overall Clark and Floyd Counties 15% ROP plan and Lake and Porter Counties contingency plan SIP revisions will be taken in a subsequent Federal Register action).

On May 3, 1995, the Indiana Air Pollution Control Board adopted the VOL storage rule. Public hearings on the rule were held on March 1, 1995, and May 3, 1995, in Indianapolis, Indiana. The rule was signed by the Secretary of State on December 19, 1995, and became effective on January 18, 1996; it was published in the Indiana State Register on February 1, 1996. IDEM formally submitted the VOL storage rule to EPA on November 21, 1995, as a revision to the Indiana SIP for ozone; supplemental documentation to this revision was submitted on February 14, 1996. EPA made a finding of completeness of this submittal in a letter dated February 23, 1996.

The November 21, 1995, and February 14, 1996, submittals include the following rules:

326 IAC 8-9 Volatile Organic Liquid Storage Vessels

- (1) Applicability
- (2) Exemptions
- (3) Definitions
- (4) Standards
- (5) Testing and procedures
- (6) Record keeping and reporting requirements

II. Evaluation of Rule

As previously discussed, Indiana intends that this VOL storage SIP revision submittal will be one of the control measures under 15% ROP plan for Clark and Floyd Counties, and included in the contingency plan for Lake and Porter Counties. A review of what emission reduction this SIP achieves for purposes of the Indiana 15% ROP plan will be addressed when EPA takes rulemaking action on the Clark and Floyd Counties 15% ROP plan and Lake and Porter Counties contingency plan SIPs. (EPA will take

¹ A definition of RACT is cited in a General Preamble-Supplement on CTGs, published at 44 FR at 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

² The EPA publishes CTGs in order to assist the States in determining RACT. The CTGs provide information on available air pollution control techniques and provide recommendations on what the EPA considers the "presumptive norm" for RACT.

rulemaking on these plans in a subsequent rulemaking action).

To determine the approvability of the Indiana VOL storage SIP submission, the rule was reviewed for consistency with section 110 and part D of the Act, and with EPA RACT guidance. Because there is no published CTG for VOL storage tanks at this time, EPA is using the draft model rule contained in the draft CTG and the ACT (draft model rule) to determine whether the Indiana rule constitutes RACT. Once the CTG is published, however, State VOL storage rules must achieve the CTG's stringency of control. A summary of the rule and discussion of EPA's analysis follows. For the complete requirements of this SIP revision, interested parties should see the 326 IAC 8-9 rule.

326 IAC 8-9-1 Applicability

This section establishes which VOL storage operations are subject to the rule. Beginning October 1, 1995, stationary vessels used to store VOL that are located in Clark, Floyd, Lake, and Porter Counties are subject to all of the requirements of the rule, except those vessels with a capacity of less than 39,000 gallons, a maximum true vapor pressure of less than 0.75 pounds per square inch absolute (psia), or otherwise exempted under section 2. VOL storage vessels with a capacity less than 39,000 gallons, or a maximum vapor pressure of less than 0.75 psia, however, are subject to certain record keeping and reporting requirements in section 6. These applicability criteria are consistent with applicability criteria contained in the draft model rule, and, therefore, are approvable.

326 IAC 8-9-2 Exemptions

This section exempts the following vessels from the requirements of this rule: (1) vessels at coke oven byproduct plants; (2) pressure vessels designed to operate in excess of 29.4 psia and without emissions to the atmosphere; (3) vessels that are permanently attached to mobile vehicles such as trucks, rail cars, barges, or ships; (4) vessels with a design capacity less than or equal to 420,000 gallons used for petroleum or condensate stored, processed, or treated prior to custody transfer; (5) vessels located at bulk gasoline plants; (6) storage vessels located at gasoline service stations; (7) vessels used to store beverage alcohol; and (8) stationary vessels that are subject to any provision of 40 CFR part 60, subpart Kb, New Source Performance Standard for Volatile Organic Liquid Storage. These exemption provisions are consistent with exemption provisions in the draft

model rule and, therefore, are approvable.

326 IAC 8-9-3 Definitions

This section includes the following definitions to apply throughout the Indiana rule: (1) Condensate; (2) Custody transfer; (3) Fill; (4) Gasoline Service Station; (5) Maximum True Vapor Pressure; (6) Petroleum; (7) Petroleum Liquids; (8) Reid Vapor Pressure; (9) Vessel; (10) Volatile Organic Liquid; and (11) Waste. The term, "bulk gasoline plant," which is used in section 2 under the rule, is already defined in section 326 IAC 1-2-7. These definitions are generally consistent with those provided in the ACT's model rule. The definition of maximum true vapor pressure specifies the use of standard reference texts such as certain American Petroleum Institute publications, AP-42, and the Chemical Rubber Company's Handbook of Chemistry and Physics, to determine the maximum true vapor pressure of VOL in a particular vessel at the highest calendar month average ambient temperature in Lake and Porter Counties, which is 73 degrees Fahrenheit, and in Clark and Floyd Counties, which is 77.7 degrees Fahrenheit. This is consistent with the option contained in the draft model rule to use standard reference texts to determine maximum true vapor pressure. The definition of maximum true vapor pressure is approvable.

326 IAC 8-9-4 Standards

Section 4(a) requires that the owner or operator of each vessel with a capacity greater than or equal to 39,000 gallons and which stores VOL with a maximum true vapor pressure greater than or equal to 0.75 psia but less than 11.1 psia shall reduce emissions in accordance with the following control requirements.

Each vessel having a permanently fixed roof is required by section 4(a)(1) to have installed on or before May 1, 1996 either: (A) an internal floating roof meeting the standards for such roofs as specified in section 4(c) of the rule; (B) a closed vent system and control device meeting the standards for such equipment as specified in section 4(d) of the rule; or (C) an equivalent emission control system resulting in equivalent emissions reductions to that obtained by installing an internal floating roof meeting the standards of section 4(c).

Each vessel having an internal floating roof is required by section 4(a)(2) to have installed either: (A) an internal floating roof meeting the standards for such roofs as specified in section 4(c) of the rule at the time of the next scheduled vessel cleaning, but not

later than May 1, 2006; (B) a closed vent system and control device meeting the standards for such equipment as specified in section 4(d) of the rule, on or before May 1, 1996; or (C) an equivalent emissions control system resulting in equivalent emissions reductions to that obtained by installing an internal floating roof meeting the standards of section 4(c), on or before May 1, 1996.

Each vessel having an external floating roof is required by section 4(a)(3) to be installed with either: (A) an external floating roof meeting the standards for such roofs as specified in section 4(e) of the rule at the time of the next scheduled vessel cleaning, but not later than May 1, 2006; (B) a closed vent system and control device meeting the standards for such equipment as specified in section 4(d) of the rule, on or before May 1, 1996; or (C) an equivalent emissions control system on or before May 1, 1996, resulting in equivalent emissions reductions to that which would be obtained by installing an external floating roof meeting the standards of section 4(e).

Although sections 4(a)(1)(C), 4(a)(2)(C), and 4(a)(3)(C) specify that sources may comply by using an "equivalent control system" to the rule's roof and sealing requirements if equivalent VOC reductions are obtained by May 1, 1996, Indiana has indicated that no sources have used that option for compliance. All sources covered under this rule, therefore, are required to meet either the applicable roof and seals requirements under sections 4(a)(1)(A), 4(a)(2)(A), and 4(a)(3)(A), or the applicable closed vent system and control device requirements under sections 4(a)(1)(B), 4(a)(2)(B), and 4(a)(3)(B). Therefore, provisions which would require alternative control methods to be subject to EPA review, which is generally required by EPA for RACT rules, is not necessary.

Section 4(b) requires that each vessel with a capacity of greater than 39,000 gallons that stores VOL with a maximum true vapor pressure greater than or equal to 11.1 psia shall equip each vessel with a closed vent and control device meeting the standards for such equipment as specified in section 4(d) of the rule.

Section 4(c) specifies that internal floating roofs be equipped with one of the following: (A) a foam or liquid-filled seal mounted in contact with the liquid; (B) two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the vessel and the edge of the internal floating roof; or (C) a mechanical shoe seal that consists of

a metal sheet held vertically against the wall of the vessel by springs or weighted levers and that is connected by braces to the floating roof, with a flexible coated fabric, or envelope, spanning the annular space between the metal sheet and floating roof. Section 4(c) also requires that the internal floating roof rest or float on the liquid surface during storage of VOL, and that certain equipment be used to properly seal the various fittings of the vessel.

Section 4(d) provides that closed vent systems and control devices being used to comply with the rule meet the following specifications. The closed vent system must be designed to collect all VOC vapors and gases discharged from the vessel and operated with no detectable emission, as indicated by an instrument reading of less than 500 parts per million above background and visual inspections in accordance with the methods specified in 40 CFR 60, subpart VV, 60.485(C). The control device must be designed and operated to reduce inlet VOC emissions by 95% or greater. If a flare is used as the control device, it shall meet the specifications described in the general control device requirements in 40 CFR 60.18, General Provisions.

Section 4(e) requires that each external floating roof tank be equipped with a closure device between the wall of the storage vessel and the roof edge. The closure device is to consist of a primary seal and a secondary seal. The primary seal is required to completely cover the annular space between the edge of the floating roof and vessel wall and shall be either a liquid mounted seal or a shoe seal. The secondary seal shall completely cover the annular space between the external floating roof and the wall of the vessel in a continuous fashion. Section 4(e) also requires that the external floating roof rest or float on the liquid surface during storage of VOL, and that certain equipment be used to properly seal the various fittings of the vessel.

The control requirements contained for fixed roof tanks, internal floating roof tanks, external floating roof tanks, and closed vent systems and control devices in section 4 (a) through (e) are generally consistent with the draft model rule, and, therefore, are approvable.

326 IAC 8-9-5 Testing and Procedures

This section provides the test methods which are to be used to determine compliance with the rule, which consists of visual inspection methods for the internal or external floating roof and the various seals required for each type of roof. This

section also indicates the various frequencies by which these inspections are to be conducted, depending on the type of seals used. In addition, section 5 specifies the time frame by which any defects found by a visual inspection must be addressed. Furthermore, this section requires that IDEM be notified at least 30 days in advance so that the agency can have the opportunity to have an observer present. As for VOL storage operations which are complying by means of a closed vent system and control device, the owner or operator must submit to IDEM before January 1, 1996, an operating plan containing documentation demonstrating that the control device will achieve the required control efficiency during maximum loading conditions, and a description of the parameter or parameters to be monitored to ensure the control device will be operated in conformance with its design. Affected sources must operate the closed vent system and control device and monitor the control devices' parameters in accordance with the operating plan unless the plan is revised by IDEM. Those sources complying through means of a closed vent system and flare shall meet the requirements specified in the general control device requirements in 40 CFR 60.18(e) and 40 CFR 60.18(f). These testing requirements are generally consistent with test methods expressed in the draft model rule, and, therefore, are approvable.

326 IAC 8-9-6 Recordkeeping and Reporting Requirements

The Indiana rule establishes certain recordkeeping and reporting requirements under section 6 which took effect when the rule took effect in October 1, 1995 (as provided under section 1 of the rule). Section 6(a) requires that records be kept for at least 3 years unless specified otherwise. Section 6(b) requires subject sources to maintain a record for the life of each affected vessel and report to IDEM the vessel's identification number, dimensions, capacity, and a description of the vessel's emission control equipment, or schedule for the installation of such equipment, with a certification that the equipment meets the applicable standards. Sources must also, under section 6(c) and 6(d), keep for at least 3 years records of the visual inspection conducted, any required measurements taken, and action taken to address defects, and report to IDEM within 30 days any defects found and the date and action taken to address defects.

Those sources complying through means of a closed vent system with a control device must, under section 6(e),

maintain a record of the operating plan and parameter values monitored. Those sources complying through means of a closed vent system with a flare must furnish a report containing required measurements within 6 months of the initial start-up date, and a semiannual report of all periods recorded under section 40 CFR 60.115 in which the pilot flame was absent.

Section 6(g) requires VOL storage vessels with a design capacity greater than 39,000 gallons storing a VOL with a maximum true vapor pressure greater than or equal to 0.5 psia but less than 0.75 psia to maintain a daily record of the maximum true vapor pressure of the VOL stored in the vessel. Section 6(h) requires vessels with a design capacity greater than 39,000 gallons storing a VOL with a maximum true vapor pressure less than 0.75 psia to maintain a record and notify IDEM within 30 days when the maximum true vapor pressure of the VOL exceeds 0.75 psia. Vessels equipped with a closed vent system and control device are exempt from subsection (g) and (h), as provided under subsection (f).

Section 6(i) contains procedures for determining the maximum true vapor pressure. Section 6(j) requires certain monitoring requirements for vessels storing a waste mixture of indeterminate or variable composition. These record keeping and reporting requirements are consistent with those provided under the draft model rule, and, therefore, are approvable.

III. Final Action

Based upon the analysis above, the EPA finds that Indiana's regulation covering VOL storage operations, 326 IAC 8-9, as submitted on November 21, 1995, and February 14, 1996, is generally consistent with EPA's guidance in the draft model rule for this source category and, therefore, is considered to constitute RACT. EPA, therefore, is approving this rule as a revision to Indiana's ozone SIP.

The EPA is proposing 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 March 18, 1997 unless, by February 18, 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 March 18, 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.* versus

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 March 18, 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 25, 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 as follows:

PART 52—[AMENDED]

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

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

2. Section 52.770 is amended by adding paragraph (c)(111) to read as follows:

§52.770 Identification of Plan.

* * * * *

(c) * * *

(111) On November 21, 1995, and February 14, 1996, Indiana submitted a rule for the control of volatile organic compound emissions from volatile organic liquid storage operations in Clark, Floyd, Lake, and Porter Counties.

(i) *Incorporation by reference.* 326 Indiana Administrative Code 8-9: Volatile Organic Liquid Storage Vessels, Section 1: Applicability, Section 2: Exemptions, Section 3: Definitions, Section 4: Standards, Section 5: Testing and procedures, Section 6: Record keeping and reporting requirements. Adopted by the Indiana Air Pollution Control Board May 3, 1995. Filed with the Secretary of State December 19, 1995. Published at Indiana Register, Volume 19, Number 5, February 1, 1996. Effective January 18, 1996.

[FR Doc. 97-1081 Filed 1-16-97; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 52 and 81

[CA-98-1-7196a; FRL-5661-6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of California; Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Monterey Bay Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is, through direct final procedure, approving the redesignation of the Monterey Bay Area from nonattainment to attainment for ozone. Through this direct final action, EPA is also approving for the Monterey Bay Area the maintenance plan, 1990 base year emissions inventory, emission statement rule, volatile organic compound (VOC) reasonably available control technology (RACT) rule 419 and oxides of nitrogen (NO_x) RACT rule 431 as revisions to California's State Implementation Plan (SIP) for ozone. In addition, EPA is determining that the