C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rules that include 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. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, Local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to State, Local, or tribal governments, or to 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 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 September 19, 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 the proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 25, 1997.

A. Stanely Meiburg,

Acting Regional Administrator.

Part 52 of chapter I, title 40, 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 K—Florida

2. Section 52.520, is amended by adding paragraph (c)(98) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(98) Revisions to the Florida SIP to amend the gasoline tanker truck leak testing procedures, change the requirements to submit test results and update the gasoline tanker truck leak test form which were submitted on September 25, 1996.

(i) Incorporation by reference. 62–252.500(3) and 62–252.900, effective September 10, 1996.

(ii) Other material. None.

[FR Doc. 97–19093 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN68–3; FRL–5852–7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 25, 1994 and April 29, 1997, the Indiana Department of Environmental Management (IDEM) submitted proposed revisions to its State Implementation Plan (SIP). The submission contains revisions to the Indiana SIP's general provisions (326 IAC 1–1; 326 IAC 1–2), the applicability criteria of the rule for malfunctions (326 IAC 1–6), and the applicability criteria for state construction and operating permit requirements (326 IAC 2–1). The submission also revises Indiana's construction permit program (326 IAC 2–1) and its ''Permit no defense'' regulation (326 IAC 2–1). With this rule, EPA is approving this SIP submission because it is consistent with the Clean Air Act and applicable regulations. EPA has proposed approval and solicited comment on this direct final action through the proposed rule previously published in the **Federal Register** at (62 FR 7193); if adverse comments are received, EPA will withdraw the direct final rule and address the comments received in a new final rule. Unless this direct final rule is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: This action will be effective September 19, 1997 unless adverse or critical comments are received by August 20, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

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

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

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

SUPPLEMENTARY INFORMATION:

I. Background

IDEM submitted its proposed revisions to the Indiana SIP on October 25, 1994. The submission included changes to the State's permit review rules and federally enforceable state operating permits program (326 IAC 2–8), source specific operating agreements (326 IAC 2–9), and enhanced new source review (NSR) rules (326 IAC 2–1–3.2). The October 25, 1994 submission also contained provisions pertaining to Hazardous Air Pollutants (HAPs), pursuant to Section 112(g) of the Clean Air Act. EPA made a finding

of completeness in a letter dated November 25, 1994.

On August 18, 1995, EPA approved the federally enforceable state operating permit and enhanced new source review regulations (60 FR 43008). On April 12, 1996, EPA approved the source specific operating agreement rule (61 FR 14487).

On February 18, 1997 (62 FR 7157), EPA approved the remainder of Indiana's October 25, 1994 submission as a ''direct final action.'' On that date, EPA also proposed to approve the submission and solicited comments on the direct final action (62 FR 7193). In response to the proposal, EPA received comments from two Indiana companies and IDEM requesting that EPA withhold approval of those subsections relating to HAPs and Section 112(g) of the Act. These requests were based upon: (1) The fact that Federal provisions had been promulgated subsequent to Indiana's rulemaking which obviated the need for the HAP provisions contained in the Indiana rules, and (2) the contention that HAP-related provisions should not be addressed as part of a SIP action under Section 110 of the Act. As a result of the adverse comments, EPA withdrew the direct final rule on April 9, 1997 (62 FR 17095).

By letter on April 29, 1997, Indiana requested that EPA withdraw from consideration the following portions of the permitting rules: 326 IAC 2–1–1(b)(1)(G), 326 IAC 2–1–1(b)(1)(H) and 326 IAC 2–1–1(b)(3)(B)(iii). In addition, Indiana noted that 326 IAC 2–1–1(b)(3)(B)(v) includes a reference to subsections (b)(1)(G) and (b)(1)(H). IDEM requested that EPA note in its action that those citations, which are due to be either modified or eliminated in current State rulemaking, were not being approved as part of EPA's action. In light of the above, EPA is approving the following revisions to Title 326 of the Indiana Administrative Code (326 IAC)—Article One: General Provisions, Rule One: Sections 2 and 3; Rule Two: Sections 2, 4, 12, 33.1, 33.2, 33.5; Rule Six: Section 1. The EPA is also approving revisions to 326 IAC—Article Two: Permit Review Rules, Rule One: Sections 1, 3, and 10. EPA is taking no action on the portions of the rule which Indiana has withdrawn, as identified above. The purpose of this revision is to update and revise the SIP to reflect statutorily-mandated changes to the permit programs. The rationale for EPA's approval is summarized in this rule. A more detailed analysis is set forth in a technical support document which is available for inspection at the Region 5 Office listed above.

II. Summary of State Submittal

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

326 IAC 1–1–2 References to Federal Act: This section was revised specifically to reference the Clean Air Act Amendments of 1990 because the SIP incorporated changes required by the 1990 Amendments.

326 IAC 1–1–3 References to the Code of Federal Regulations (CFR): This section updates the reference to the CFR from the 1989 edition to the 1992 edition and specifically references the July 21, 1992 **Federal Register** with regard to 40 CFR Part 70.

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

326 IAC 1–2–2 ''Allowable emissions'' definition: The previous definition calculated an allowable emission rate by combining the most stringent of three listed criteria with the maximum rated capacity of the facility (unless the facility was subject to a limit on the operating rate or hours of operation, or both). This definition has been expanded to include potential emissions and daily emission rates for noncontinuous batch manufacturing operations.

326 IAC 1–2–4 ''Applicable state and federal regulations'' definition: This section has been revised to clarify that this definition includes rules adopted under 326 IAC by the Air Pollution Control Board, all regulations included in the CFR by EPA, and specific requirements established by the Act.

326 IAC 1–2–12 ''Clean Air Act'' definition: This section was updated to include a reference to the Clean Air Act Amendments of 1990. The previous definition made only a general reference to the Act.

326 IAC 1–2–33.1 ''Grain elevator'' definition: This new section was added to define the term used in 326 IAC 2–9–2 (Source specific restrictions and conditions). A ''Grain elevator'' is defined as ''an installation at which grains are weighed, cleaned, dried, loaded, unloaded, and placed in storage.''

326 IAC 1–2–33.2 ''Grain terminal elevator'' definition: This new section was added to define the term used in 326 IAC 2–1–7.1 (Fees for registration, construction permits, and operating permits). A ''Grain terminal elevator'' is defined as any grain elevator which has a capacity greater than 2,500,000 U.S. bushels certified storage or 10,000,000 U.S. bushels annual grain throughput, which is the total amount of grain received or shipped by the grain elevator over the course of a calendar year.

326 IAC 1–6–1 ''Applicability of rule'': The owner or operator of any facility with the potential to emit at a specified emission rate, and the owner or operator of a facility with malfunctioning emission control equipment, either of whose facilities could cause emissions in excess of stated emission rates, were formerly subject to the malfunction rule. The revised section revokes the previous applicability criteria and subjects the owner or operator of any facility which is required to obtain a permit under 326 IAC 2–1–2 (Registration) or 326 IAC 2–1–4 (State Operating permits) to the malfunction rule.

The following Sections of Article 2 revise the existing regulations.

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

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

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

The revised rules have added a criterion for determining applicability of SIP provisions. This criterion regulates any modification which will increase emissions of particulate matter with an aerodynamic diameter less than or equal to 10 micrometers by 15 tons per year.

Exemptions to the applicability regulations have been adopted. The first category of excluded sources includes

existing sources or sources proposed to be operated, constructed, or modified, which have emissions of less than the emission limits specified in the provisions regarding either: (1) Applicability of registration requirements found at 326 IAC 2–1–1(b)(2) or (2) applicability of requirements governing the construction permits, enhanced NSR, operating permits, and fees. The second category exempts existing sources who seek only changes in a method of operation, a reconfiguration of existing equipment or other minor physical changes, or a combination of the above which does not increase emissions in excess of: (1) Significance levels in PSD limitations and emissions offsets; (2) specific threshold levels adopted for Lake and Porter Counties; (3) levels specified in provisions governing the applicability of regulations for construction permits, enhanced NSR, operating permits, and fees (not including the general 25 tons per year criteria); and (4) levels specified for the volatile organic compound rules. The third category exempts temporary operations and experimental trials which involve construction, reconstruction, or modification which meet specific criteria.

326 IAC 2–1–3 Construction permits: This revision eliminates the need for the submission of plans and specifications to be prepared by a professional engineer registered to practice in Indiana, with an application for a construction permit. The applicant, however, is now required to place a copy of the permit application for public review at a library in the county where construction is proposed. Finally, the revision requires any applicant who proposes to construct upon land which is underdeveloped or for which a valid existing permit has not been issued, to make a reasonable effort to provide notice to all owners or occupants of land adjoining the proposed construction site.

326 IAC 2–1–10 Permit no defense: This section states that a permit which is obtained by a source shall not be used as a defense against a violation of any regulation. An exception has been added for alleged violations of applicable requirements for which a permit shield has been granted according to 326 IAC 2–1–3.2 (Enhanced NSR) and 326 IAC 2–7–15 (Part 70 permit program; Permit shield).

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

III. Rulemaking Action

Many of the revisions to the General Provisions updated definitions with respect to the 1990 Clean Air Act Amendments. Revisions were also in response to the recent addition of the Source Specific Operating Agreement program. The changes to the Permit Review Rules are presumably intended to alleviate the permitting burden on IDEM. By using the ''allowable'' definition and adding exemption regulations in 326 IAC 2–1–1, IDEM will be able to concentrate its resources on relatively more significant sources. For the reasons stated above, the EPA approves the plan revisions submitted on October 25, 1994 and April 29, 1997, to incorporate changes to existing regulations and to accommodate recent revisions to the SIP by adding and updating regulations.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in a previous **Federal Register** publication, the EPA has proposed to approve the SIP revision should adverse or critical comments be filed. This action will be effective on September 19, 1997 unless, by August 20, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 19, 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

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. 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. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is

not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Lead, Particulate matter, Sulfur dioxide, Volatile organic compounds.

Dated: June 18, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

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

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(109) On October 25, 1994, and April 29, 1997, the Indiana Department of Environmental Management requested a revision to the Indiana State Implementation Plan in the form of revisions to the General Provisions and Permit Review Rules intended to update and add regulations which have been effected by recent SIP revisions, and to change regulations for streamlining purposes. This revision took the form of an amendment to Title 326: Air Pollution Control Board of the Indiana Administrative Code (326 IAC) 1–1 Provisions Applicable Throughout Title 326, 1–2 Definitions, 1–6 Malfunctions, 2–1 Construction and Operating Permit Requirements.

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

* * * * *

[FR Doc. 97–19092 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX No.VA062–5019; FRL–5861–2]

Approval and Promulgation of Air Quality Implementation Plans; Richmond, Virginia—NO_X Exemption Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing final approval of a petition from the Commonwealth of Virginia requesting that the Richmond moderate ozone nonattainment area be exempt from applicable nitrogen oxides (NO_X) reasonably available control technology (RACT) control requirements of section 182(f) of the Clean Air Act (Act). This exemption request, submitted by the Virginia Department of Environmental Quality, is based upon three years of ambient air monitoring data which demonstrate that the National Ambient Air Quality Standard (NAAQS) for ozone has been attained in the Richmond area without additional reductions of NO_X. The effect of this action is to remove the requirement for NO_X RACT contingent upon continued monitoring of attainment in the Richmond area. The action will also stop application of the offset sanction imposed on January 8, 1996 and defer application of future sanctions as of the effective date of the exemption approval. This action is being taken under section 182(f) of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on August 20, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Christopher H. Cripps, (215) 566–2179, at the EPA Region III address above (or via e-mail at cripps.christopher@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: On December 18, 1995, the Commonwealth of Virginia's Department of Environmental Quality submitted a NO_X exemption petition that would exempt the Richmond ozone nonattainment area from the NO_X RACT requirement under section 182(f) of the Act. The exemption request was based upon ambient air monitoring data for 1993, 1994, and 1995, which demonstrated that the NAAQS for ozone has been attained in the area without additional reductions of NO_X. Subsequent to the original request for an exemption, additional ambient data for 1996 became available. The EPA has reviewed the ambient air monitoring data for 1994, 1995, and 1996 and concludes that the area is still attaining the ozone standard.

The current design value for the Richmond nonattainment area, computed using ozone monitoring data for 1994 through 1996, is 116 parts per billion (ppb). The average annual number of expected exceedances is 0.7 for that same time period. For the 1993 to 1995 time period, the average annual number of expected exceedances was 1.0, and the corresponding design value was 124 ppb. An area is considered in attainment of the standard if the average annual number of expected exceedances is less than or equal to 1.0.

On July 26, 1996, the Commonwealth of Virginia submitted a redesignation request and complete maintenance plan for the Richmond ozone nonattainment area based on the 1993 to 1995 air quality monitoring data. The EPA will be acting on this submittal in a separate rulemaking document.

On March 19, 1996, the EPA proposed approval of the NO_X exemption petition for the Richmond ozone nonattainment area (61 FR 11170). Also, in a March 19, 1996 interim final rule, EPA made a determination that the Commonwealth, contingent on continued monitored attainment of the ozone NAAQS, had corrected the deficiency of failing to submit NO_X RACT rules (61 FR 11162). This interim final rule did not stop the sanction clock that started under section 179 for this area on July 8, 1994. However, this interim final rule did stay the application of the offset sanction and has deferred the application of the highway sanction. The EPA provided