

(I) Rule 4403, adopted on February 16, 1995.

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[FR Doc. 96-1847 Filed 1-31-96; 8:45 am]

BILLING CODE 6560-50-W

40 CFR Part 52

[IN57-1-7204a; FRL-5333-9]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On August 25, 1995, the State of Indiana submitted a State Implementation Plan (SIP) revision request to the United States Environmental Protection Agency (USEPA) for open burning as part of the State's 15 percent (%) Rate of Progress (ROP) Plan control measures for Volatile Organic Compounds (VOC). VOC is one of the air pollutants which combine on hot summer days to form ground-level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing passages. These ROP plans are intended to bring areas which have been exceeding the public health based Federal ozone air quality standard closer toward the goal of attaining and maintaining this standard. The control measures specified in this open burning SIP revision prohibit residential open burning in Clark, Floyd, Lake, and Porter Counties beginning June 1, 1995. Indiana expects that these measures will reduce VOC emissions by 921 pounds per day in Lake and Porter Counties, and 704 pounds per day in Clark and Floyd Counties.

DATES: The "direct final" is effective on April 1, 1996, unless USEPA receives adverse or critical comments by March 4, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the revision request and USEPA's analysis (Technical Support Document) are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone David Pohlman at (312) 886-3299 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), U.S.

Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman at (312) 886-3299.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act requires all moderate and above ozone nonattainment areas to achieve a 15 percent reduction of 1990 emissions of volatile organic compounds by 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 areas are subject to the 15 percent Rate of Progress (ROP) requirement. On August 25, 1995, the Indiana Department of Environmental Management (IDEM) submitted a SIP revision request which amends Title 326 Indiana Administrative Code Article 4 Rule 1 Section 3 (326 IAC 4-1-3), to include a ban on residential open burning in Clark, Floyd, Lake, and Porter Counties. In doing so, IDEM believes that these control measures will help reduce VOC emissions enough to meet the 15% ROP requirements. The USEPA is undertaking a separate analysis to determine whether the 15% ROP requirement has been met as a result of this and other States submissions, and will make that determination in a separate rulemaking action.

Public hearings were held on this rule on May 4, 1994, September 7, 1994, and April 5, 1995, in Indianapolis, Indiana. The rules were finally adopted by the Indiana Air Pollution Control Board on April 5, 1995, became effective on June 23, 1995, and were published in the Indiana Register on July 1, 1995.

II. Analysis of State Submittal

The USEPA first approved an Indiana open burning rule on June 22, 1978, (43 FR 26721) as rule APC-2. (Indiana has since recodified APC-2 as 326 IAC 4-1.) Changes in the rule since USEPA's approval include the addition of an exemption for prescribed burning by the Department of Natural Resources for wildlife habitat maintenance, forestry purposes, and Natural Area management (326 IAC 4-1-3(a)(8)), and an exemption for United States Department of the Interior burning in order to facilitate a National Park Service Fire Management Plan for the Indiana Dunes National Lakeshore (326 IAC 4-1-3(a)(9)). These exemptions have been in place on the State level for several years, but had not been

submitted for USEPA approval before the August 25, 1995, submittal.

The major change in the new rule is the addition of a ban on residential open burning for Clark, Floyd, Lake, and Porter Counties. The rule continues to allow residential open burning, with certain restrictions, in other parts of the State. There are no specific requirements or criteria for the USEPA to use in reviewing a ban against open burning. However, it is reasonable to conclude that this rule will provide reductions in VOC emissions. Therefore, this rule is approvable as part of Indiana's 15% ROP plan.

III. Final Rulemaking Action

Revised 326 IAC 4-1-3, contains a ban on residential burning in Clark, Floyd, Lake, and Porter Counties, and has been submitted as part of Indiana's 15% ROP Plan for VOC. The USEPA has undertaken an analysis of this SIP revision request based on a review of the materials presented by IDEM and has determined that it is approvable because it provides an enforceable mechanism for reducing VOCs and ozone. USEPA will take separate action on Indiana's ROP Plan in a future Federal Register document.

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 1, 1996, unless USEPA receives adverse or critical comments by March 4, 1996. If 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 subsequent rulemaking. Please be aware that USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to today's 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 1, 1996.

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 9, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. 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.

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the USEPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the USEPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. 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. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements.

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 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 1, 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, Incorporation by reference.

Dated: October 31, 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)(100) to read as follows:

§ 52.770 Identification of Plan.

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(c) * * *

(100) On August 25, 1995, Indiana submitted a regulation which bans residential open burning in Clark, Floyd, Lake, and Porter Counties in Indiana. The regulation allows residential open burning, with certain restrictions, in other parts of the State, and describes other types of open burning which are allowed in Indiana.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 4: Burning Regulations, Rule 1: Open Burning, Section 3: Exemptions. Added at 18 In. Reg. 2408 Effective June 23, 1995.

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40 CFR Part 52

[MD043-3005; FRL-5339-2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Prevention of Significant Deterioration: PM-10 Increments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland which amends Code of Maryland Administrative Regulations (COMAR) 26.11.01.01, 26.11.02.10 (C)(9), and 26.11.06.14. The intended effect of this action is to approve an amendment to Maryland's Prevention of Significant Deterioration (PSD) program. This revision makes these regulations consistent with the currently effective version of 40 CFR part 52.21, including establishing the maximum increases in ambient particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM-10) concentration allowed in an area above the baseline concentrations. This action is being taken in accordance with section 110 of the Clean Air Act (CAA), and in satisfaction of the June 3, 1993 promulgation of the PM-10 increment regulations requiring that existing state PSD programs be modified to replace the total suspended particulate (TSP) increments with the new PM-10 increment provisions.