

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[IN53-1a; FRL-5710-1]

Approval and Promulgation of State Implementation Plan; Indiana**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: In this action, EPA is approving the following as revisions to the Indiana ozone State Implementation Plan (SIP): a Rate-Of-Progress (ROP) plan to reduce Volatile Organic Compounds (VOC) emissions in Lake and Porter Counties by 15 percent (%) by November 15, 1996; a contingency plan to reduce VOC emissions by an additional 3% beyond the ROP plan, and an Indiana agreed order requiring VOC emission controls on Keil Chemical Division, Ferro Corporation, located in Lake County (Keil Chemical). The 15% ROP plan, 3% contingency plan, and the agreed order were submitted together on June 26, 1995. The plans and agreed order help to protect the public's health and welfare by reducing the emissions of VOC that contribute to the formation of ground-level ozone, commonly known as urban smog.

DATES: This final rule is effective June 2, 1997 unless adverse comments are received by May 5, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886-6082.

SUPPLEMENTARY INFORMATION:**I. Background on 15% ROP and Contingency Plans Requirements**

On November 15, 1990, Congress enacted amendments to the 1977 Clean Air Act (Act); Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. Section 182(b)(1) requires states with ozone nonattainment areas classified as moderate and above to submit a SIP revision known as a 15%

ROP plan. This plan must reflect an actual reduction in typical ozone season weekday VOC emissions of at least 15% in the area during the first 6 years after enactment (i.e., by November 15, 1996). The emission reductions needed to achieve the 15% requirement must be calculated using a 1990 anthropogenic VOC emissions inventory as a baseline, minus emissions that have been reduced by: (1) The Federal Motor Vehicle Control Program (FMVCP) measures for the control of motor vehicle exhaust or evaporative emissions promulgated before January 1, 1990; and (2) gasoline Reid Vapor Pressure (RVP) regulations promulgated by November 15, 1990 (See 55 FR 23666, June 11, 1990). In addition, the plan must account for net growth in emissions within the nonattainment area between 1990 and 1996.

Section 172(c)(9) of the Act requires states with moderate and above areas to adopt a contingency plan by November 15, 1993, which provides for specific control measures to be implemented if an area fails to achieve ROP requirements or attain the National Ambient Air Quality Standard in the time frames specified under the Act. In addition, section 182(c)(9) of the Act requires that contingency plans for serious or above ozone nonattainment areas to provide for specific measures to be implemented if an area fails to meet an applicable milestone under the Act. These sections require that contingency measures must be able to take effect when a failure occurs without further action by the State or the Administrator.

In Indiana, two ozone nonattainment areas are subject to the 15% ROP and contingency plans requirements: the Lake and Porter Counties portion of the Chicago severe ozone nonattainment area, and the Clark and Floyd Counties portion of the Louisville moderate ozone nonattainment area. This rulemaking action addresses only the plans for Lake and Porter Counties; Clark and Floyd Counties will be addressed in a separate **Federal Register**.

II. Indiana's 15% ROP and Contingency Plans Submittal

The Act requires States to observe certain procedural requirements in developing SIPs and SIP revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act require that each State's SIP revision submitted under the Act be adopted by the State after reasonable notice and public hearing. The State of Indiana submitted a portion of the Lake and Porter Counties 15% ROP and contingency plan SIP revisions on January 13, 1994.

The SIP revisions were reviewed by EPA to determine completeness shortly after submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). However, the submittal was deemed incomplete because the plans had not yet gone through public hearing and did not include fully adopted rules for all of the plans' control measures. Indiana held a public hearing on the plans on March 29, 1994. A summary of comments from that hearing and the Indiana Department of Environmental Management's (IDEM) response was submitted on July 5, 1994. IDEM sent a supplemental submittal on June 26, 1995, which included fully adopted rules for the Lake and Porter Counties 15% ROP and contingency plans. In a July 17, 1995, letter to Indiana, the State was notified that the SIP submittal was deemed complete.

III. Criteria for 15% ROP and Contingency Plans Approvals

The requirements for 15% ROP and 3% contingency plans are found in section 172(c)(9), 182(b)(1), and 182(b)(9) of the Act, and the following EPA guidance documents:

1. *Procedures for Preparing Emissions Projections*, EPA-450/4-91-019, Environmental Protection Agency, July 1991.
2. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed rule (57 FR 13498), **Federal Register**, April 16, 1992.
3. "November 15, 1992, Deliverables for Reasonable Further Progress and Modeling Emission Inventories," memorandum from J. David Mobley, Edwin L. Meyer, and G.T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 7, 1992.
4. *Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans*, EPA-452/R-92-005, Environmental Protection Agency, October 1992.
5. "Quantification of Rule Effectiveness Improvements," memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 1992.
6. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans*, EPA-452/R-93-002, March 1993.
7. "Correction to 'Guidance on the Adjusted Base Year Emissions Inventory

and the 1996 Target for the 15 Percent Rate of Progress Plans',” memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 2, 1993.

8. “15 Percent Rate-of-Progress Plans,” memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 16, 1993.

9. *Guidance on the Relationship Between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA-452/R-93-007, Environmental Protection Agency, May 1993.

10. “Credit Toward the 15 Percent Rate-of-Progress Reductions from Federal Measures,” memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, May 6, 1993.

11. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans*, EPA-452/R-93-005, Environmental Protection Agency, June 1993.

12. “Correction Errata to the 15 Percent Rate-of-Progress Plan Guidance Series,” memorandum from G.T. Helms, Chief, Ozone and Carbon Monoxide Programs Branch, Environmental Protection Agency, July 28, 1993.

13. “Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas,” memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, August 13, 1993.

14. “Region III Questions on Emission Projections for the 15 Percent Rate-of-Progress Plans,” memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 17, 1993.

15. “Guidance on Issues Related to 15 Percent Rate-of-Progress Plans,” memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, Environmental Protection Agency, August 23, 1993.

16. “Credit Toward the 15 Percent Requirements from Architectural and Industrial Maintenance Coatings,” memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 10, 1993.

17. “Reclassification of Areas to Nonattainment and 15 Percent Rate-of-Progress Plans,” memorandum from

John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 20, 1993.

18. “Clarification of ‘Guidance for Growth Factors, Projections and Control Strategies for the 15 Percent Rate-of-Progress Plans’,” memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

19. “Review and Rulemaking on 15 Percent Rate-of-Progress Plans,” memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

20. “Questions and Answers from the 15 Percent Rate-of-Progress Plan Workshop,” memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, October 29, 1993.

21. “Rate-of-Progress Plan Guidance on the 15 Percent Calculations,” memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, October 29, 1993.

22. “Clarification of Issues Regarding the Contingency Measures that are due November 15, 1993 for Moderate and Above Ozone Nonattainment Areas,” memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, November 8, 1993.

23. “Credit for 15 percent Rate-of-Progress Plan Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule,” memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, December 9, 1993.

24. “Guidance on Projection of Nonroad Inventories to Future Years,” memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, February 4, 1994.

25. “Discussion at the Division Directors Meeting on June 1 Concerning the 15 Percent and 3 Percent Calculations,” memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, June 2, 1994.

26. “Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards,” memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation,

Environmental Protection Agency, November 28, 1994.

27. “Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,” memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, November 29, 1994.

28. “Transmittal of Rule Effectiveness Protocol for 1996 Demonstrations,” memorandum from Susan E. Bromm, Director, Chemical, Commercial Services and Municipal Division, Office of Compliance, Environmental Protection Agency, December 22, 1994.

29. “Future Nonroad Emission Reduction Credits for Locomotives,” memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, January 3, 1995.

30. “Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule,” memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 22, 1995.

31. “Fifteen Percent Rate-of-Progress Plans—Additional Guidance,” memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, May 5, 1995.

32. “Update on the credit for the 15 percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule,” memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 7, 1996.

33. “Date by which States Need to Achieve all the Reductions Needed for the 15% Plan from Inspection and Maintenance (I/M) and Guidance for Recalculation,” memorandum from Margo Oge, Director, Office of Mobile Sources, and John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 13, 1996.

34. “Modeling 15 Percent Volatile Organic Compound (VOC) Reduction(s) from I/M in 1999: Supplemental Guidance,” memorandum from Gay MacGregor, Director, Regional and State Programs Division, and Sally Shaver, Director, Air Quality Strategies and Standards Division, Environmental Protection Agency, December 23, 1996.

35. “15% Volatile Organic Compound (VOC) State Implementation Plan (SIP) Approvals and the ‘As Soon As

Practicable' Test," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, and Richard B. Ossias, Deputy Associate General Counsel, Division of Air and Radiation, Office of General Counsel, Environmental Protection Agency, February 12, 1997.

36. "Sample City Analysis: Comparison of Enhanced Inspection and Maintenance (I/M) Reductions Versus Other 15 Percent Rate of Progress (ROP) Plan Measures," E.H. Pechan, February 12, 1997.

For a 15% ROP plan SIP to be approved, the plan must adequately justify how much emission reduction is needed to achieve the 15% emission reduction by November 15, 1996, and how the plan's control strategy will secure that reduction.

The procedure for calculating the needed emission reduction is as follows:

(A) Calculate the "1990 ROP inventory" by subtracting from the area's "1990 base year inventory" (required to be submitted under sections 172(c)(3) and 182(a)(1) of the Act ¹) biogenic emissions, emissions outside of the nonattainment area, and pre-enactment banked emission credits;

(B) Calculate the "1990 adjusted base year inventory" by subtracting from the 1990 ROP inventory any emission reductions from the pre-1990 FMVCP and 1990 RVP Federal regulations which occur between 1990 and 1996;

(C) Calculate "15% of adjusted base year emissions" by multiplying the 1990 adjusted base year inventory by 15%;

(D) Calculate the "total required reductions by 1996" by adding emission reductions from the 1990 FMVCP and 1990 RVP federal rules to the 15% of adjusted base year emissions calculation (as provided under section 182(b)(1)(D) of the Act);

(E) Calculate the "1996 emissions target level" by subtracting from the 1990 ROP base year inventory the total required reductions by 1996;

(F) Calculate the "1996 projected emission estimate" by a number of methods, such as adding growth factors to the 1990 adjusted base-year inventory, or adding growth factors and required emission reductions to the 1990 ROP inventory; and

(G) Calculate the "reduction required by 1996 to achieve 15% net of growth" by subtracting the 1996 target emissions level from the 1996 projected emissions level.

In determining what control measures a State can use in its 15% ROP plan strategy, the Act provides under section 182(b)(1)(C) that emission reductions from control measures are creditable to the extent that they have actually occurred before November 15, 1996. In keeping with this requirement, the General Preamble states that all credited emission reductions must be real, permanent, and enforceable, and that regulations needed to implement the

plan's control strategy must be adopted and implemented by the State by November 15, 1996.

As for the contingency plan, the General Preamble states that the contingency measures must provide reductions of 3% of the emissions from the 1990 adjusted base year inventory. While all contingency measures must be fully adopted rules or measures, the State can use these measures in two different ways. The State can use its discretion to implement any contingency measures before 1996.

Alternately, the State may decide not to implement a measure until the area has failed to secure the 15% emission reduction, attain the National Ambient Air Quality Standards (NAAQS) for ozone, or meet any other applicable milestone under the Act. In that situation, the reductions must be achieved through triggered, prior adopted rules within one year from the date in which the failure has been identified.

The EPA has reviewed the State's submittal for consistency with the requirements of the Act and EPA guidance. A summary of EPA's analysis is provided below.

IV. Analysis of Lake and Porter Counties 15% ROP and Contingency Plans

Indiana's 15% ROP summary for Lake and Porter Counties is provided in the following table:

15% ROP SUMMARY FOR LAKE AND PORTER COUNTIES

	Lbs VOC/day
CALCULATION OF REDUCTION NEEDS BY 1996	
1990 Lake and Porter Counties Total VOC Emissions	424,721
1990 ROP Emissions (Anthropogenic only)	381,841
1990-1996 Noncreditable Reductions (Reductions from 1990 RVP and Pre-1990 FMVCP Regulations)	58,838
1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions)	323,003
15% of Adjusted Base Year Emissions	48,450
Total Required Emission Reductions by 1996 (15% of Adjusted Base Year Emissions plus Noncreditable Reductions)	107,288
1996 Target Level (1990 ROP Emissions minus Total Required Emission Reductions by 1996)	274,553
1996 Projected Emissions (1990 Adjusted Base Year Emissions plus Growth Factors)	342,683
REDUCTION NEEDS BY 1996 TO ACHIEVE 15 PERCENT NET OF GROWTH (1996 Projected Emission minus 1996 Target Level)	68,130
CREDITABLE REDUCTION FROM MANDATORY CONTROLS	
Mobile Sources:	
Enhanced Vehicle Inspection and Maintenance (I/M) Program (326 IAC 13-1.1)	6,817
Federal Reformulated Gasoline Program (40 CFR Part 80, Subpart D)	14,905
Area Sources:	
Stage II Gasoline Vapor Recovery (326 IAC 8-4-6)	9,824
Federal Architectural and Industrial Maintenance (AIM) Coatings Rule	2,920
Point Sources:	
Non-Control Techniques Guideline (CTG) Reasonably Available Control Technology (RACT) Rule (326 IAC 8-7)	4,559

¹ Sections 172(c)(3) and 182(a)(1) of the Act require that nonattainment plan provisions include a comprehensive, accurate inventory of actual emissions which occurred in 1990 from all sources of relevant pollutants in the nonattainment area.

This inventory provides an estimate of the amount of VOC and oxides of nitrogen produced by emission sources such as automobiles, powerplants and the use of consumer solvents in the household. Because the approval of such inventories is

necessary to an area's 15% ROP plan and attainment demonstration, the emission inventory must be approved prior to or with the 15% ROP plan submission.

15% ROP SUMMARY FOR LAKE AND PORTER COUNTIES—Continued

	Lbs VOC/ day
SUBTOTAL—REDUCTIONS FROM MANDATORY CONTROLS	39,025
CREDITABLE REDUCTIONS FROM NON MANDATORY CONTROLS	
Point Sources:	
Keil Chemical Agreed Order	5,327
Coke Oven Battery Shutdowns at Inland Steel Flat Products ² (326 IAC 6–1–10.1(k)(5))	22,850
Area Sources:	
Residential Open Burning (326 IAC 4–1)	929
SUBTOTAL—REDUCTION FROM NON MANDATORY CONTROLS	29,106
TOTAL CREDITABLE REDUCTIONS FROM 15% ROP PLAN	68,130

² Total reductions from the coke oven battery closures are 23,609 lbs VOC/day. Reductions not counted toward the 15% ROP plan are being used as a contingency measure.

A. Calculation of the 1990 Adjusted Base Year Emission Inventory

To determine the 1990 adjusted base year inventory, Indiana used the 1990 base year emission inventory approved by EPA on January 4, 1995 (60 FR 375), which was found to meet the requirements of sections 172(c)(3) and 182(a)(1) of the Act for Lake and Porter Counties. Total VOC emissions estimated from this inventory are 424,721 lbs VOC/day. Indiana subtracted biogenic emissions and emissions from outside Lake and Porter Counties from the 1990 base year inventory to determine that the 1990 ROP inventory level is 381,841 lbs VOC/day. No pre-enactment banked emission credit was included in this inventory.

Indiana used EPA's Mobile Source Emissions Model (MOBILE)5a to calculate the emission reductions from the pre-1990 FMVCP and 1990 RVP regulations; these reductions were subtracted from the 1990 ROP inventory level to find the 1990 adjusted base year inventory level of 323,003 lbs VOC/day. Indiana's documentation includes the actual 1990 motor vehicle emissions using 1990 vehicle miles traveled (VMT) and MOBILE5a emission factors, and the adjusted emissions using 1990 VMT and the MOBILE5a emission factors in calendar year 1996 with the appropriate RVP for the nonattainment area as mandated by EPA. The plan includes

adequate documentation showing how the MOBILE5a model was run to calculate the expected emission reductions from FMVCP and RVP.

B. 1996 ROP Target Emission Level

To calculate the 1996 target emission level for Lake and Porter Counties, Indiana first multiplied the 1990 adjusted base year inventory by 0.15 to determine that the 15% required emission reduction by 1996 is 48,450 lbs VOC/day. Then, 58,838 lbs VOC/day of reductions from non-creditable control measures (pre-1990 FMVCP and 1990 RVP) were added to the 15% required reduction to find that the total required reductions by 1996 is 107,288 lbs VOC/day. Finally, Indiana subtracted the 1996 total required emission reductions from the 1990 ROP emission inventory to determine that the 1996 emission target level for Lake and Porter Counties is 274,553 lbs VOC/day.

The 15% ROP plan submittal adequately documents the calculations used to determine the Lake and Porter Counties target level by showing each step, discussing any assumptions made, and stating the origin of the numbers used in the calculations.

C. Projected Emission Inventory

To determine the 1996 projected emission inventory, Indiana has

included in the 15% ROP plan the growth factors used together with documentation for the assumptions made. The point, area, and non-road mobile source emission inventories were projected using either source supplied data, population forecasts, historical data, or, where historical data were unavailable or not suitable to project, the U.S. Department of Commerce, Bureau of Economic Analysis (BEA), regional growth data were used. The on-road mobile source emission inventory was projected using MOBILE5a. The State's calculations for growth in the on-road mobile, off-road mobile, industrial, and area source sectors is 10,180 lbs VOC/day, 1,298 lbs VOC/day, 4,692 lbs VOC/day, and 3,510 lbs VOC/day, respectively, for a total of 19,680 lbs VOC/day. These growth estimates were calculated in a manner consistent with EPA's guidance documents. The projected emissions were added to the 1990 adjusted base-year inventory to determine that the 1990 projected emission inventory level is 342,683 lbs VOC/day.

D. Contingency Measure Provisions

Indiana's contingency plan summary for Lake and Porter Counties is shown in the following table:

CONTINGENCY MEASURE SUMMARY FOR LAKE AND PORTER COUNTIES

	Lbs VOC/ day
CALCULATION OF CONTINGENCY MEASURE REDUCTION NEEDED	
1990 Adjusted Base Year Emissions	342,683
3 Percent of 1990 Adjusted Base Year Emissions	9,690
CREDITABLE REDUCTIONS FROM CONTINGENCY MEASURES	
Remaining Coke Oven Battery Shutdowns at Inland Steel (326 IAC 6–1–10.1(k)(5))	759
Municipal Solid Waste (MSW) Landfill Rule (326 IAC 8–8)	1,132
Coke Oven National Emission Standard for Hazardous Air Pollutants (NESHAP) ³ (40 CFR Part 63, Subpart L)	1,226
Automobile Refinishing Rule (326 IAC 8–10)	4,679

CONTINGENCY MEASURE SUMMARY FOR LAKE AND PORTER COUNTIES—Continued

	Lbs VOC/ day
Volatile Organic Liquid (VOL) Storage Rule (326 IAC 8-9)	2,620
TOTAL CREDITABLE CONTINGENCY REDUCTIONS	10,416

³ Although the purpose of NESHAP rules are to control the emissions of hazardous air pollutants (HAP), pursuant to section 112 of Title III of the Act, much of the HAPs controlled under the coke oven NESHAP are also VOC.

E. Creditable Reductions From Control Measures

From the calculation of the 1996 target emission level and 1996 projected emission level, Indiana must reduce emissions in Lake and Porter Counties by 68,130 lbs VOC/day, to secure the 15% ROP reduction, and an additional 9,690 lbs VOC/day, to secure the required 3% contingency reduction. The Lake and Porter Counties 15% ROP and 3% contingency plans do meet this requirement. The total creditable emission reduction achieved by the 15% ROP and 3% contingency plans are 68,130 lbs VOC/day, and 10,416 lbs VOC/day, respectively. Emission reductions not needed to meet the 3% contingency requirement will be applied toward achieving post-1996 ROP reductions, leading to attainment of the ozone air quality standard.

The SIP submittal includes documentation indicating the sources or source categories which are expected to be affected by each control measure, the sources' projected 1996 emissions without controls, and the assumptions used to estimate how much the sources' 1996 emissions would be reduced by each control measure. These assumptions were derived primarily from Midwest Research Institute's April 30, 1993, document entitled "Support Document for Indiana's Lake and Porter Nonattainment Area 1996 Rate of Progress Plan," which was contracted by EPA to assist Indiana in developing the 15% ROP and contingency plans. A review of the emission reduction credit taken for each control measure follows:

Enhanced I/M Program

Of the 15% ROP plans originally submitted to EPA, most contain enhanced I/M programs because they achieve more VOC emission reductions than most, if not all other, control strategies. However, because most states experienced substantial difficulties implementing enhanced I/M programs, only a few States are currently actually testing cars using the original enhanced I/M protocol.

On September 18, 1995 (60 FR 48029), EPA finalized revisions to its enhanced I/M rule allowing States significant

flexibility in designing I/M programs appropriate for their needs. Further, Congress enacted the National Highway Systems Designation Act of 1995 (NHSDA), which provides States with more flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by States to re-design enhanced I/M programs in accordance with the final enhanced I/M rules and/or the guidance contained within the NHSDA, to secure State legislative approval when necessary, and set up the infrastructure to perform the testing program has precluded States from obtaining emission reductions from enhanced I/M by November 15, 1996.

Given the heavy reliance by many States on enhanced I/M programs to help satisfy 15% ROP plan requirements, and the recent NHSDA and regulatory changes regarding enhanced I/M programs, EPA has recognized that it is not possible for many States to achieve the portion of the 15% ROP reductions that are attributed to enhanced I/M by November 15, 1996. Under these circumstances, disapproval of the 15% ROP plan SIPs would serve no purpose. Consequently, under certain circumstances, EPA will allow States that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs in their 15% ROP plans, even though the emission reductions from the I/M program will occur after November 15, 1996.

Specifically, the EPA will approve 15% ROP SIPs if the emission reductions from the revised, enhanced I/M programs, as well as from the other 15% ROP plan measures, will achieve the 15% level as soon after November 15, 1996, as practicable. To make this "as soon as practicable" determination, the EPA must determine that the 15% ROP plan contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15% level is achieved. The EPA does not believe that measures meaningfully accelerate the 15% date if they provide only an insignificant amount of reductions.

Indiana's enhanced I/M program for Lake and Porter Counties was approved by EPA on March 19, 1996 (61 FR 11142), and the State began testing vehicles under the new program on January 1, 1997. A single contractor, Envirotest, Inc., operates a test-only centralized network for inspections and re-inspection. The Indiana I/M program requires coverage of all 1976 and newer gasoline powered light duty passenger cars and light duty trucks up to 9,000 pounds Gross Vehicle Weight Rating (GVWR). All applicable 1981 and newer vehicles will be subject to a transient, mass emissions tailpipe test that includes the purge and pressure test. All applicable 1976 through 1980 vehicles will be subject to a BAR90 single-speed idle test that includes the pressure test. The I/M contractor has acquired all the emission test sites required under the State I/M contract, and all the test stations required have been constructed.

EPA has analyzed Indiana's enhanced I/M program to predict when the emission reductions claimed in the Lake and Porter Counties 15% ROP plan for the program will actually be secured. This analysis was based on the methodology specified in EPA's policy memoranda, "Date by Which States Need to Achieve all the Reductions Needed for the 15% Plan from I/M and Guidance for Recalculation," August 13, 1996, and "Modeling 15% VOC Reduction(s) from I/M in 1999—Supplemental Guidance," December 23, 1996. MOBILE5b runs were used to evaluate the credit using inputs that reflect actual program startup. Some of the input parameters of the modeling included: a January 1, 1997, program start date; start-up cutpoints as recommended by EPA; and expected evaporative test procedures available at start-up. The State has taken credit in the Lake and Porter Counties 15% ROP plan for 6,817 lbs VOC/day, or 3.41 tons per day reductions from enhanced I/M. Based on EPA's analysis, the emission reduction claimed will be secured by November 1999. (See EPA's August 13, 1996, policy memorandum titled "Date by Which States Need to Achieve all the Reductions Needed for the 15% Plan from I/M and Guidance for

Recalculation," for further discussion on the November 1999 date).

To determine whether there are other available potential control measures which can meaningfully accelerate the date by which 15% emission reduction in Lake and Porter Counties can be achieved, EPA compared the Lake and Porter Counties 15% ROP and contingency plans with control measures included in 15% ROP plans nation-wide, which are listed in EPA's report, "Sample City Analysis: Comparison of Enhanced I/M Reductions Versus other 15 Percent ROP Plan Measures," referenced in EPA's policy document "15% VOC SIP Approvals and the 'As Soon As Practicable' Test," February 12, 1997. Based upon the report, EPA believes that there are no other potential control measures beyond those already included in the Lake and Porter Counties 15% ROP and contingency plans which can secure a significant amount of emission reduction before November 1999.

Because Indiana's enhanced I/M program will secure emission reductions claimed under the Lake and Porter Counties 15% ROP plan by November 1999, and because there are no other potential control measures which can meaningfully accelerate the achievement of 15% reduction in the counties before November 1999, the EPA finds that the Lake and Porter Counties 15% ROP plan does secure 15% emission reductions as soon as practicable. On this basis, the emission reduction claimed for the Lake and Porter Counties enhanced I/M program under the 15% ROP plan is approvable.

Federal Reformulated Gasoline Program

The federal reformulated gasoline program (40 CFR part 80, subpart D) requires gasoline providers in Lake and Porter Counties to sell only gasoline which meets certain blending requirements to reduce pollution. The VOC reduction from reformulated gasoline was determined using the MOBILE5a model to estimate the difference between 1996 highway mobile source emissions at RVP 9.0, the level of control upon gasoline in Lake and Porter Counties before the reformulated gasoline requirement, and 1996 highway mobile source emissions with reformulated gasoline. Indiana has credited a 14,905 lbs/day emission reduction from this program, which is acceptable.

Stage II Gasoline Vapor Recovery Rule

Indiana's Stage II rule (326 IAC 8-4-6) requires facilities that sell more than 10,000 gallons of gasoline per month to

operate Stage II vapor recovery systems certified to have a control effectiveness of at least 95%. Indiana has estimated that the rule has a 84% program in-use efficiency, accounting for annual inspection program effects and the exemption of facilities with a monthly gasoline throughput of less than 10,000 gallons. Indiana has credited a 9,824 lbs VOC/day emission reduction from this rule, which is acceptable.

Federal AIM Coatings Rule

Pursuant to section 183(e) of the Act, EPA proposed on June 25, 1996 (61 FR 32729), a national rule requiring manufacturers of AIM coatings to meet VOC content limitations. The March 7, 1996, EPA memorandum "Update on the Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule" allows States to take credit for a 20% reduction in AIM coating emissions, even though promulgation of the rule has been delayed. Based on this policy, Indiana has taken an emission reduction credit of 2,920 lbs VOC/day, which is acceptable.

Non-CTG RACT Rule

Indiana's Non-CTG RACT rule (326 IAC 8-7) requires VOC controls on sources which have the potential to emit 25 tons of VOC emissions per year, and are not already covered under an existing CTG or part of a post-1990 CTG category.⁴ Sources subject to this rule are allowed to demonstrate compliance by choosing among any one of the following three available options: (1) achieve an overall VOC reduction in baseline actual emissions of 98% by the addition of add-on controls or documented reduction in VOC-containing materials used; (2) achieve a level of reduction equal to 81% of baseline actual emission by the same means as stated above, where it is demonstrated that a 98% reduction in source emissions is not achievable; or (3) achieve an alternative overall emission reduction by the application of RACT as determined by the State and EPA. Indiana estimates that the rule's overall control efficiency is 81%, and has a rule effectiveness of 80%. Indiana has credited 4,559 lbs VOC/day in

⁴RACT is 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. CTGs are EPA documents which provide recommendations on what EPA considers the presumptive norm for RACT for particular industries. Indiana was required to adopt the Non-CTG RACT rule by section 182(b)(2) of the Act.

emission reductions from this rule, which is acceptable.

Keil Chemical Agreed Order

Keil Chemical is required under a July 29, 1994, agreed order (Cause No. A-2250) to limit emissions from its Pyro-Chek stack to 15 tons of VOC/year by operating a carbon adsorption add-on control device. Indiana credits this device to reduce emissions by 5,327 lbs VOC/day, which is acceptable.

Coke Oven Battery Shutdowns at Inland Steel Flat Products

Inland Steel is required under Indiana's Particulate Matter rule 326 IAC 6-1-10.1(k)(5) to shut down numbers 6 through 11 coke batteries before 1996. The 1990 base-year inventory emissions from these coke batteries, 23,609 lbs VOC/day, are being credited as emission reductions. Indiana is using 22,850 lbs VOC/day towards the 15% ROP plan, and 759 lbs VOC/day as a contingency measure. These reductions are acceptable.

Residential Open Burning Rule

Under Indiana's rule 326 IAC 4-1, residential open burning is banned in Lake and Porter Counties. Indiana estimates 80% emission reduction and 80% rule effectiveness from this rule. An emissions reduction credit of 929 lbs VOC/day from the rule is acceptable.

Municipal Solid Waste Landfills Rule

The State rule 326 IAC 8-8 applies to new and existing municipal solid waste landfills emitting greater than 55 tons of non-methane organic compounds per year and with a minimum design capacity of 100,000 megagrams of solid waste. The rule requires the operation of a landfill gas collection system and combustion device. Based on a destruction efficiency of 98% and collection efficiencies ranging from 50% to 60%, Indiana estimates that an overall VOC emission control efficiency of 49% may be achieved, with 80% rule effectiveness. Indiana has credited an emission reduction of 1,132 lbs VOC/day from this rule, which is acceptable.

Coke Oven NESHAP

This federal rule (40 CFR part 63, subpart L) applies to all by-product coke ovens and nonrecovery coke ovens as stipulated in the rule. The hazardous air pollutants regulated under the rule are also VOC. The rule is estimated to have a 15% and 52% control efficiency for topside leaks and charging, respectively, along with 80% rule effectiveness. An emission reduction of 1,226 lbs VOC/day has been credited from this rule, which is acceptable.

Automobile Refinishing Rule

The State rule 326 IAC 8-10 requires automobile and mobile equipment refinishing shops to use lower VOC coatings, less-emitting spray-gun and spray-gun cleaning equipment, and improved work practices to reduce VOC. To improve rule effectiveness, this rule also requires refinishing coating suppliers in the area to sell only coatings which meet the VOC limits required in the rule. In addition to documentation contained in the submittal, Indiana submitted supplemental documentation which indicates that an overall 77.8% emission reduction can be expected from all the control measures required by this rule, with 100% rule effectiveness. This documentation has been included in the docket for this rulemaking. Indiana has taken an emission reduction credit of 4,679 lbs VOC/day from this rule, which is acceptable.

VOL Storage Rule

The State rule 326 IAC 8-9 requires special roof design and sealing requirements for certain VOL storage vessels. Indiana is only taking credit from controls on external floating roof tanks and fixed roof tanks, assuming 96% and 50% control efficiency, respectively, as contingency measures. The emission credit taken for the VOL storage rule, 2,620 lbs VOC/day, is acceptable.

The Lake and Porter Counties 15% ROP and contingency plans contain adequate documentation on how the expected emission reductions from the control measures were calculated. These expected reductions are approvable.

F. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (See sections 172(c)(6), 110(a)(2)(A) of the Act, and 57 FR

13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from the Assistant Administrator for Air and Radiation (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP [see section 110(a)(2)(C) of the Act].

The control measures included in the Lake and Porter 15% ROP and contingency plans have been fully adopted by Indiana and have been submitted to EPA as revisions to the State's ozone SIP. The EPA has independently reviewed each control measure to determine conformance with SIP requirements under section 110 and part D of the Act, and the overall enforceability of the measure's requirements. Rulemaking action on each control measure is as follows:

Control measure	Date of EPA approval
Enhanced I/M Program (326 IAC 13-1.1)	March 19, 1996 (61 FR 11142).
Reformulated Gasoline (40 CFR Part 80, Subpart D)	Federal regulation promulgated February 16, 1994, (59 FR 7716).
Stage II Gasoline Vapor Recovery (326 IAC 8-4-6)	April 28, 1994 (59 FR 21942).
Federal AIM Coatings Rule	Proposed federal regulation for which Indiana can take credit. (See memorandum dated March 7, 1996, from John Seitz, Director, Office of Air Quality Planning and Standards to Regional Air Division Directors.)
Non-CTG RACT (326 IAC 8-7)	July 5, 1995 (60 FR 34857).
Keil Chemical July 29, 1994, Agreed Order	Date of EPA approval action is date of today's FEDERAL REGISTER. See discussion below.
Residential Open Burning Ban (326 IAC 4-1)	February 1, 1996 (61 FR 3581).
Coke Oven Battery Shutdown (326 IAC 6-1-10.1(k)(5))	June 15, 1995 (60 FR 31412).
Municipal Solid Waste Landfills (326 IAC 8-8)	January 17, 1997 (62 FR 2591).
Coke Oven NESHAP (40 CFR Part 60, Subpart L)	Federal regulation promulgated October 27, 1993 (58 FR 57911).
Auto Refinishing (326 IAC 8-10)	June 13, 1996 (61 FR 29965).
Volatile Organic Liquid Storage Tanks (326 IAC 8-9)	January 17, 1997 (62 FR 2593).

The agreed order for Keil Chemical is being approved in today's direct final rulemaking action. A discussion of this approval is included in part V of this rulemaking action.

G. Transportation Conformity 1996 Mobile Source Emissions Budget

Section 176(c) requires States to submit SIP revisions establishing the State's criteria and procedures for assessing the conformity of federal actions (transportation and general) to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim

emission reductions or other milestones in any area. To assure conformity with the SIP, conformity analyses for transportation projects must take into account the amount of on-road mobile source emissions that can be emitted in accordance with SIP emission reduction milestones. For the purposes of EPA transportation conformity determinations, the 1996 emission level for on-road mobile sources that is achieved from the 15% ROP plan, constitutes the 1996 VOC mobile source emission budget for Lake and Porter Counties. This level, which is derived from MOBILE5a using 1996 projected on-road mobile source emissions with reformulated gasoline and enhanced I/M, is 50,015 lbs/day. Therefore, final approval of the 15% ROP plan also approves the 1996 mobile source VOC emission budget.

For years after 1996, conformity determinations addressing VOCs must

demonstrate consistency with this plan revision's motor vehicle emissions budget, and satisfaction of the build/no-build test. Final approval of this 15% ROP plan would not eliminate the need for a build/no-build test for oxides of nitrogen.

H. Concluding Statement on 15% ROP and Contingency Plans

The EPA has reviewed the Lake and Porter Counties 15% ROP and contingency plans SIP revisions submitted to EPA as described above, and finds that the plans satisfy the requirements of sections 172(c)(9), 182(b)(1), and 182(c)(9) of the Act, as well as EPA guidance for such plans. Therefore, the EPA, in this action, is approving these plans as revisions to the Indiana ozone SIP.

V. Analysis of Keil Chemical Agreed Order

A July 29, 1994, agreed order (Cause No. A-2250) between IDEM and Keil Chemical was included in the Lake and Porter Counties 15% ROP and contingency plans SIP submittal as a control measure for the 15% ROP plan. Keil Chemical operates a Pyro-Chek manufacturing process in Hammond, Lake County, Indiana. The 1990 plant VOC emissions from the Pyro-Chek stack were estimated to be 5,060 lbs VOC/day, and, if left uncontrolled, were projected to be approximately 5,464 lbs VOC/day in 1996. Pursuant to the agreed order with IDEM, Keil Chemical installed and began operation of a carbon adsorption system to limit VOC emissions from the Pyro-Chek process stack to 15 tons of VOC per year. The agreed order also requires Keil Chemical to implement a fugitive emission control program and limits total emissions from the plant to 25 tons of VOC per year. In today's action, EPA is approving the July 29, 1994, Agreed Order as a revision to the Indiana ozone SIP. As a result of the control placed on the Pyro-Chek stack, Indiana is claiming 5,327 lbs VOC/day in emissions reductions from the stack.

VI. Final Rulemaking Action

The EPA approves Indiana's 15% ROP plan for Lake and Porter Counties, 3% contingency plan for Lake and Porter Counties, and the Keil Chemical Agreed Order, as revisions to the SIP. For transportation conformity purposes, final approval of the 15% ROP plan also approves the 1996 mobile source emission budget of 50,015 lbs VOC/day.

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 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 June 2, 1997 unless, by May 5, 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 June 2, 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.

VII. 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. 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 section 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 section 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 June 2, 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, Intergovernmental relations, Incorporation by reference, Ozone.

Dated: February 19, 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 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)(112) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(112) On June 26, 1995, Indiana submitted an agreed order with Keil Chemical Division, Ferro Corporation (Keil Chemical) requiring volatile organic compound emission control at Keil Chemical's Pyro-Chek manufacturing process, located in Hammond, Lake County, Indiana.

(i) *Incorporation by reference.* Agreed Order of the Indiana Department of Environmental Management, Cause No. A-2250, adopted and effective, July 29, 1994.

3. Section 52.777 is amended by adding paragraphs (k) and (l) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbon).

* * * * *

(k) On June 26, 1995, Indiana submitted a 15 percent rate-of-progress plan for the Lake and Porter Counties portion of the Chicago-Gary-Lake County ozone nonattainment area. This plan satisfies the counties' requirements under section 182(b)(1) of the Clean Air Act, as amended in 1990.

(l) On June 26, 1995, Indiana submitted a 3 percent contingency plan for the Lake and Porter Counties portion of the Chicago-Gary-Lake County ozone nonattainment area. This plan satisfies the counties' requirements under section 172(c)(9) and 182(c)(9) of the Clean Air Act, as amended in 1990.

[FR Doc. 97-8383 Filed 4-2-97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 0 and 1**

[GC Docket No. 95-21; FCC 97-92]

Ex Parte Presentations in Commission Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its regulations concerning ex parte presentations in Commission proceedings. The new rules simplify the determination in particular proceedings of whether ex parte presentations are permissible and whether they must be disclosed. The proposed rules also modify the Commission's "Sunshine period prohibition." Certain other minor amendments of the rules are made. The intended effect of the amendments is to

make the rules simpler and easier to comply with, to enhance the fairness of the Commission's processes, and to facilitate the public's ability to communicate with the Commission.

EFFECTIVE DATE: June 2, 1997.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418-1760.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, GC Docket No. 95-21, adopted on March 13, 1997, and released March 19, 1997. The full text of the report and order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., Suite 140, 2100 M Street NW., Washington, D.C. 20037, telephone (202) 857-3800.

Summary of Report and Order

1. In this report and order, the Commission revises its rules governing ex parte presentations in Commission proceedings. The revision is intended to make the rules simpler and clearer, and thus more effective in ensuring fairness in Commission proceedings. The Commission stresses that the ex parte rules are important and that full compliance is expected.

2. The Commission revises its system for specifying whether proceedings are "restricted," "permit-but-disclose" or "exempt," which determine how ex parte presentations are treated in that proceeding subject to specific exceptions. (An ex parte presentation is a communication to a Commission decisionmaker concerning the outcome or merits of a proceeding which—if written—is not served on all parties and—if oral—is made without notice and the opportunity for all parties to be present.) In restricted proceedings, ex parte presentations are prohibited. In permit-but-disclose proceedings, ex parte presentations are permitted but must be disclosed on the record of the proceeding. In exempt proceedings, ex parte presentations may be made without limitation. The revised rules adopt a simplified system for determining the status of a proceeding.

3. Under this system, all proceedings not specifically designated as exempt or permit-but-disclose (either by the rules or by order or public notice in an individual proceeding) are restricted from the point that someone becomes a "party" to the proceeding. Thus, the extent of the restriction is governed by

the definition of "party." If there is only a single "party" (as defined in the ex parte rules) in a restricted proceeding, the Commission and the party may freely make presentations to each other because there is no other party to be served or with a right to be present. If there are additional parties, then those parties must be served or be given an opportunity to be present. Under the rules, parties include: (1) any person who files an application, waiver request, petition, motion, request for a declaratory ruling, or other filing seeking affirmative relief (including a Freedom of Information Act request), and any person who files a written submission referencing and regarding such pending filing which is served on the filer, or, in the case of an application, any person filing a mutually exclusive application; (2) any person who files a complaint which is served on the subject of the complaint or which is a formal complaint under 47 U.S.C. § 208 and § 1.721 of our rules, and the person who is the subject of such a complaint; (3) any person who files a petition to revoke a license or other authorization or a petition for an order to show cause and the licensee or entity who is the subject of the petition; (4) the subject of an order to show cause, hearing designation order, notice of apparent liability, or similar notice or order, or petition for such notice or order, or any other person who has otherwise been given formal party status in a proceeding; and (5) in a rulemaking proceeding (other than a broadcast allotment proceeding) or a proceeding before a Joint Board or before the Commission to consider the recommendation of a Joint Board, the general public. To be deemed a party, a person must make the relevant filing with the Secretary, the relevant Bureau or Office, or the Commission as a whole. Written submissions made only to the Chairman or an individual Commissioner will not confer party status since such filings do not demonstrate the requisite intent or formality for party status.

4. A few matters will continue to be expressly classified as exempt. These include (1) notice of inquiry proceedings, (2) petitions for rulemaking, (3) tariff proceedings before they are set for investigation, and (4) proceedings involving complaints which are not served on the target of the complaint, are informal § 208 complaints, or are cable rate complaints not filed on the standard complaint form.

5. Other proceedings are classified as permit-but-disclose (a term replacing the former term "nonrestricted"). These