

must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the 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 Act forbids USEPA 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, USEPA 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. No new Federal requirements are imposed. 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, USEPA 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 16, 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.

Dated: April 1, 1997.

Michelle D. Jordan,
Acting Regional Administrator.

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 KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(114) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(114) On November 12, 1996, the Ohio Environmental Protection Agency submitted a request to incorporate section(G)(9)(g) of Rule 3745-21-07 of the Ohio Administrative Code into the Ohio State Implementation Plan (SIP). Section (G)(9)(g) provides an additional exemption from organic compound emission controls for qualifying new sources. Because, in the process of adopting section(G)(9)(g), minor editorial changes were made to other parts of Rule 3745-21-07, the United States Environmental Protection Agency is incorporating all of Rule 3745-21-07 into the Ohio SIP. This will avoid confusion by making the SIP approved rule identical to the current State rule.

(i) Incorporation by reference.

(A) Rule 3745-21-07 of the Ohio Administrative Code, adopted October 7, 1996, effective October 31, 1996, as certified by Donald R. Schregardus,

Director of the Ohio Environmental Protection Agency.

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BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN73-1a; FRL-5807-9]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: In this action, USEPA is approving a State Implementation Plan Revision (SIP) request submitted by the Indiana Department of Environmental Management (IDEM) on October 2, 1996, to eliminate references to total suspended particulates (TSP) while maintaining the existing opacity requirements. This SIP revision will also enable the removal of the TSP designation table for Indiana counties from 40 CFR 81.315.

DATES: This action is effective on June 16, 1997, unless USEPA receives adverse or critical comments by May 16, 1997. If the effective date is delayed, timely notification will be published in the **Federal Register**.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ryan Bahr, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4366.

SUPPLEMENTARY INFORMATION:

I. Background

On April 30, 1971, the USEPA promulgated primary and secondary standards for particulate matter (PM) measured as total suspended particulates (TSP) (36 FR 8166). On July 1, 1987 (52 FR 24633), the National Ambient Air Quality Standard (NAAQS)

for PM was revised. With this revision, the USEPA replaced TSP as the indicator for PM with those particulates with aerometric diameters less than 10 micrometers (PM-10).

However, USEPA continued to regulate TSP for two reasons. The first reason is that sections 110(l) and 193 of the Clean Air Act (Act) prohibit relaxation of the SIP. Therefore, opacity limits which reference TSP have remained as part of the SIP. The second reason is that, at that time, the Act's statutory prevention of significant deterioration (PSD) increments were still defined in terms of TSP (52 FR 24683).

Indiana requested on November 16, 1988, (and supplemented on September 10, 1992) to have eight areas which were designated nonattainment for TSP redesignated to attainment. More specifically, Indiana requested that portions of each of the following counties be redesignated attainment for TSP: Clark, Dearborn, DuBois, Lake, Marion, St. Joseph, Vanderburgh, and Vigo. The USEPA proposed to approve this request on February 9, 1993 (58 FR 7762), on the condition that Indiana supplement the submittal with rule modifications ensuring that no relaxations of the opacity limits were going to occur upon redesignation. This request was disapproved April 8, 1993 (58 FR 18161), because Indiana did not submit these supplemental materials.

The TSP designations have remained in the CFR and have been used to determine PSD increments and the applicability of certain sections of the opacity regulations. The PM increments, used for PSD purposes, were replaced with increments based on PM-10 on June 3, 1993 (58 FR 31621). On April 3, 1996, IDEM adopted a rule which retains the opacity requirements of the original rule and eliminates the references to TSP designations. This amendment became effective July 19, 1996, and was submitted to the USEPA as a SIP revision request on October 2, 1996. The USEPA found this submittal to be complete and issued a completeness letter to IDEM on February 27, 1997.

II. Analysis of State Submittal

This SIP revision request originated so that the CFR could be simplified by removing the TSP designations. Toward this end, the SIP revision request submitted October 2, 1996, eliminates references to TSP from 326 Indiana Administrative Code 5-1 (326 IAC 5-1) and retains opacity limits which are identical to those in the current SIP. Indiana's October 2, 1996, submittal revises 326 IAC 5-1 to simply list each

of the current TSP nonattainment areas instead of referencing the TSP designations in 40 CFR 81.315; identical limits apply to these areas. The opacity limit which applies to all areas in Indiana not on the "nonattainment" list and not having a site or area specific limit is also retained.

The main concern in making this revision is that the areas currently designated attainment, unclassifiable, and nonattainment for TSP retain their respective opacity limitations as written in the current SIP. Section 193 of the Act specifically states that any regulations which were in effect before the 1990 Clean Air Act Amendments can not be modified "in any manner unless the modification insures equivalent or greater emissions reductions of such air pollutants." Since identical opacity limits are retained for the respective areas, this requirement is satisfied. Modeling was not required for this submittal because the requirements are as strict as those in the current SIP.

One other concern is that any existing baseline dates and areas for determining the consumption of PSD increment remain intact. Any PM increment consumed since the original baseline date established for TSP will continue to be accounted for. This rulemaking in no way changes the existing framework of the PSD regulations. For more information on these regulations, refer to the final rule for PM PSD published June 3, 1993 (58 FR 31621).

III. Final Rulemaking Action

USEPA is approving the SIP revision request submitted by the State of Indiana on October 2, 1996. This action revises the SIP opacity regulation codified at 326 IAC 5-1: Opacity Limitations, Section 1: Applicability of Rule and Section 2: Visible emission limitations. This action also amends 40 CFR 81.315 by removing the table entitled "Indiana-TSP". The USEPA has completed an analysis of this SIP revision request based on a review of the materials presented, and has determined it to be approvable.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on June 16, 1997 unless, by May 16, 1997, adverse or critical comments are received.

If the USEPA 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 USEPA 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 16, 1997.

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

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget 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.*, 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 (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 Act forbids USEPA 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, USEPA 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 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 June 16, 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, Incorporation by reference, Intergovernmental relations, National parks, Particulate matter, Reporting and recordkeeping requirements, Wilderness areas.

Dated: March 28, 1997.

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)(119) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *
(119) Approval—On October 2, 1996, the State of Indiana submitted a State Implementation Plan revision request to eliminate references to total suspended particulates (TSP) while maintaining the existing opacity requirements. The SIP revision became effective July 19, 1996. The SIP revision request satisfies all applicable requirements of the Clean Air Act.

(i) Incorporation by reference. 326 Indiana Administrative Code 5-1: Opacity Limitations, Section 1: Applicability of Rule, Section 2: Visible emission limitations. Adopted by the Indiana Air Pollution Control Board April 3, 1996. Filed with the Secretary of State June 19, 1996. Published at the Indiana Register, Volume 19, Number 11, August 1, 1996 (19 IR 3049). Effective July 19, 1996.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

Subpart C—[Amended]

2. Section 81.315 is amended by removing the table entitled "Indiana-TSP".

[FR Doc. 97-9794 Filed 4-15-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[001-7201a; A-1-FRL-5808-7]

Ambient Air Quality Surveillance; Connecticut/Maine/Massachusetts/New Hampshire/Rhode Island/Vermont; Modification of the Ozone Monitoring Season

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final rule contains revisions to 40 CFR part 58, Appendix D, the Ozone Monitoring Season By State Table in Section 2.5. EPA's approval of these revisions will change the ozone monitoring season for Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont to April 1-September 30.

DATES: This action will become effective June 16, 1997, unless EPA receives adverse or critical comments by May 16, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Don Porteous, Acting Director, Office of Environmental Measurement & Evaluation, U.S. Environmental Protection Agency, Region I, 60 Westview Street, Lexington, MA 02173. Copies of the documents and data relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Environmental Measurement & Evaluation Division, U.S. Environmental Protection Agency, Region I, 60 Westview Street, Lexington, MA.

FOR FURTHER INFORMATION CONTACT: Mary Jane Cuzzupe, U.S. Environmental Protection Agency, Region I, Office of Environmental Measurement & Evaluation, Ecosystem Assessment, 60 Westview Street, Lexington, MA 02173. Telephone (617) 860-4383.

SUPPLEMENTARY INFORMATION:

I. Background

During 1993 and 1994, three New England states submitted proposals to EPA Region 1 to shorten their ozone seasons. In order to maintain a consistent ozone season throughout the Region, EPA Region 1 made the decision to process all of the requests together as one package. All of the states were notified of this decision. On February 7, 1995 (after numerous discussions with the states, and not wanting to delay processing these requests), EPA Region 1 sent formal requests to NH, VT and RI asking them if they were interested in submitting proposals to shorten their ozone seasons. As a result, the states submitted their proposals to the Region.

All six New England States have now submitted proposals to EPA Region 1 to shorten their ozone seasons. The current ozone season for EPA Region 1 is April 1-October 31. The dates of the state's request and their proposals are summarized below: