

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8879 (59 FR 17467, April 13, 1994), and by adding a new airworthiness directive (AD), amendment 39-9042, to read as follows:

94-19-51 R1 McDonnell Douglas:
Amendment 39-9042. Docket 94-NM-160-AD. Supersedes AD 94-08-07, amendment 39-8879.

Applicability: Model MD-11 and MD-11F series airplanes, equipped with Honeywell Flight Management Computers having part numbers 4059050-906, -907, and -908; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the airplane from departing the end of the runway during a high speed rejected takeoff, accomplish the following:

(a) Within 7 days after the effective date of this AD, replace the revision to the Limitations Section (Section 1) of the FAA-approved Airplane Flight Manual (AFM), page 5-1, FLIGHT GUIDANCE, Flight Management System (FMS) Section, that was required by AD 94-08-07, amendment 39-8879, with the following information. This may be accomplished by inserting a copy of

this AD or an FAA-approved McDonnell Douglas AFM revision in the AFM.

"For any approved thrust level, the FMS computed V_1 , V_R , and V_2 speeds must be verified with AFM derived data and manually entered."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on October 24, 1994, to all persons except those persons to whom it was made immediately effective by telegraphic AD T94-19-51, issued on September 14, 1994, which contained the requirements of this amendment.

Issued in Renton, Washington, on October 3, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-24872 Filed 10-6-94; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 925

Olympic Coast National Marine Sanctuary Regulations; Confirmation of Effective Date

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Confirmation of effective date.

SUMMARY: On May 6, 1994, the Under Secretary of Commerce for Oceans and Atmosphere transmitted the notice of designation for the Olympic Coast National Marine Sanctuary (Sanctuary) to Congress. The Sanctuary is an area of ocean and coastal waters, and the submerged lands thereunder, encompassing approximately 2,500 square nautical miles off the Olympic Coast of Washington State. The notice of

designation and the final regulations implementing the designation and regulating the conduct of certain activities were published in the Federal Register on May 11, 1994 (59 FR 24586). This document confirms the effective date of the regulations.

EFFECTIVE DATE: The regulations in 15 CFR Chapter IX, subchapter B, part 925 published on May 11, 1994 (59 FR 24586) took effect on July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Debra Malek, Pacific Regional Manager, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East West Highway, 12th Floor, Silver Spring, MD 20910, (301/713-3141, ext. 162).

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program.

Dated: September 30, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94-24738 Filed 10-6-94; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8567]

RIN 1545-AR50

Recapture of LIFO Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that describe the events that trigger the recapture of LIFO benefits under section 1363(d) when a C corporation elects to become an S corporation or transfers LIFO inventory to an S corporation in a tax-free reorganization. The final regulations reflect changes made to the law by the Revenue Act of 1987 and affect corporations that use the last-in, first-out (LIFO) method of accounting.

DATES: These regulations are effective October 7, 1994.

The provisions of § 1.1363-2(a)(1) apply to S elections made after December 17, 1987, except as provided in section 1022(b)(2) of the Revenue Act of 1987. The provisions of § 1.1363-2(a)(2) apply to transfers made after August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Erickson, 202-622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1993, a notice of proposed rulemaking (PS-16-93) was published in the *Federal Register* (58 FR 43827) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 1363(d).

Written comments responding to the notice were received. No public hearing was requested or held. After consideration of all the comments, the regulations proposed by PS-16-93 are adopted as revised by this Treasury decision.

Explanation of Provisions

Under the proposed regulations, a C corporation that transfers LIFO inventory to an S Corporation in a tax-free reorganization is subject to the LIFO recapture rules of section 1363(d) and must include the LIFO recapture amount in its gross income in its last taxable year of existence.

One commentator asserted that the IRS appeared to have exceeded its authority by extending the application of section 1363(d) to situations in which an S corporation succeeds to LIFO inventory in a tax-free reorganization. The IRS and the Treasury Department believe that the regulations are a valid exercise of authority to prevent the circumvention of section 1363(d). Therefore, the final regulations retain the rule of the proposed regulations.

Another commentator noted that the proposed regulations would apply to a transfer of LIFO inventory by a transferor C corporation that goes out of existence in a tax-free reorganization but would not apply to a transfer in connection with a tax-free reorganization under section 368(a)(1)(D) in which the transferor corporation remains in existence. The commentator suggested revising the regulations to require inclusion of the LIFO recapture amount in the year of the transfer of the LIFO inventory instead of the transferor corporation's last year of existence. The final regulations adopt this suggestion.

The final regulations also clarify which corporation has the responsibility to pay the three succeeding installments of tax described in section 1363(d)(2).

Commentators suggested expanding the scope of the regulations to deal with various related issues that arise from application of the LIFO recapture rules. The IRS and the Treasury Department believe that those issues are more appropriately dealt with in other forms of administrative guidance. Accordingly, these comments have not been adopted.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jeffrey A. Erickson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1363-2 is added to read as follows:

§ 1.1363-2 Recapture of LIFO benefits.

(a) *In general.* A C corporation must include the LIFO recapture amount (as defined in section 1363(d)(3)) in its gross income—

(1) In its last taxable year as a C corporation if the corporation inventoried assets under the LIFO method for its last taxable year before its S corporation election becomes effective; or

(2) In the year of transfer by the C corporation to an S corporation of the LIFO inventory assets if paragraph (a)(1) of this section does not apply and the C corporation—

(i) Inventoried assets under the LIFO method during the taxable year of the transfer of those LIFO inventory assets; and

(ii) Transferred the LIFO inventory assets to the S corporation in a

nonrecognition transaction (within the meaning of section 7701(a)(45)) in which the transferred assets constitute transferred basis property (within the meaning of section 7701(a)(43)).

(b) *Payment of tax.* Any increase in tax caused by including the LIFO recapture amount in the gross income of the C corporation is payable in four equal installments. The C corporation must pay the first installment of this payment by the due date of its return, determined without regard to extensions, for the last taxable year it operated as a C corporation if paragraph (a)(1) of this section applies, or for the taxable year of the transfer if paragraph (a)(2) of this section applies. The three succeeding installments must be paid—

(1) For a transaction described in paragraph (a)(1) of this section, by the corporation (that made the election under section 1362(a) to be an S corporation) on or before the due date for the corporation's returns (determined without regard to extensions) for the succeeding three taxable years; and

(2) For a transaction described in paragraph (a)(2) of this section, by the transferee S corporation on or before the due date for the transferee corporation's returns (determined without regard to extensions) for the succeeding three taxable years.

(c) *Basis adjustments.* Appropriate adjustments to the basis of inventory are to be made to reflect any amount included in income under this section.

(d) *Effective dates.* (1) The provisions of paragraph (a)(1) of this section apply to S elections made after December 17, 1987. For an exception, see section 10227(b)(2) of the Revenue Act of 1987.

(2) The provisions of paragraph (a)(2) of this section apply to transfers made after August 18, 1993.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: September 9, 1994.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 94-24828 Filed 10-6-94; 8:45 am]
BILLING CODE 4830-01-P

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations;
Specially Designated Nationals List

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments to the list of specially designated nationals.

SUMMARY: The Office of Foreign Assets Control is amending the Libyan

Sanctions Regulations to add Arab Hellenic Bank, S.A., Lafittrade Holdings BV, and three other entities to appendix A, Organizations Determined to be within the Term "Government of Libya" (Specially Designated Nationals of Libya); to note a name change for an entity previously listed in appendix A; to identify certain blocked property in appendix A; and to add the names of 10 individuals to appendix B, Individuals Determined to be Specially Designated Nationals of the Government of Libya.

EFFECTIVE DATE: October 7, 1994.

ADDRESS: Copies of the list of persons whose property is blocked pursuant to the Libyan Sanctions Regulations are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. The full list of persons blocked pursuant to economic sanctions programs administered by the Office of Foreign Assets Control is available electronically on *The Federal Bulletin Board* (see Supplementary Information).

FOR FURTHER INFORMATION CONTACT: J. Robert McBrien, Chief, International Programs Division, Office of Foreign Assets Control, tel.: 202/622-2420.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the *Federal Register*. By modem dial 202/512-1387 or call 202/512-1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

The Office of Foreign Assets Control ("FAC") is amending the Libyan Sanctions Regulations, 31 CFR part 550 (the "Regulations"), to add new entries to appendices A and B. Appendix A, Organizations Determined to be Within the Term "Government of Libya" (Specially Designated Nationals of Libya), is a list of organizations determined by the Director of FAC to be within the definition of the term "Government of Libya," as set forth in § 550.304(a) of the Regulations, because they are owned or controlled by or act or purport to act directly or indirectly on behalf of the Government of Libya. Appendix B, Individuals Determined to be Specially Designated Nationals of the Government of Libya, lists individuals determined by the Director of FAC to be acting or purporting to act directly or indirectly on behalf of the Government of Libya, and thus to fall within the term "Government of Libya" in § 550.304(a).

Appendix A to part 550 is amended to provide public notice of the designation of Arab Hellenic Bank, S.A., Lafittrade Holdings BV, Sabtina Limited, Teknica Oil Services (Overseas) Limited, and Teknica (UK) Limited as Specially Designated Nationals of Libya. In addition, the listing for The Libyan Arab Uganda Bank for Foreign Trade and Development is amended to note the bank's new name, Tropical Africa Bank Limited. Finally, Jardine House, located at 6 Crutched Friars, London EC3N 2HT, England, is identified as blocked property of the Government of Libya.

Appendix B to part 550 is amended to provide public notice of ten individuals determined to be Specially Designated Nationals of the Government of Libya: Dino Armani, Giampiero Armani, Dr. Najmeddine Abdalla Arifi, Dr. Nuri Abdalla Berruén, Marcello Busenti, Dr. Mukhtar Ali El-Ageli, Bahjat Fadel El Amir, Mustapha Ali El-Khoja, Smeida El-Hosh El Naili, and Hassan Senoussi Zughaid. Messrs. Dino and Giampiero Armani and Mr. Busenti are shareholders in Oilinvest (Netherlands) B.V., previously identified as a Specially Designated National, and the remaining individuals are officers or directors in other institutions named as Specially Designated Nationals in this amendment.

All prohibitions in the Regulations pertaining to the Government of Libya apply to the entities and individuals identified in appendices A and B. All unlicensed transactions with such entities or persons, or transactions in property in which they have an interest, are prohibited unless otherwise exempted or generally licensed in the Regulations.

Determinations that persons fall within the definition of the term "Government of Libya" and are thus Specially Designated Nationals of Libya are effective upon the date of determination by the Director of FAC, acting under authority delegated by the Secretary of the Treasury. Public notice is effective upon the date of publication or upon actual notice, whichever is sooner.

The list of Specially Designated Nationals in appendices A and B is a partial one, since FAC may not be aware of all agencies and officers of the Government of Libya, or of all persons that might be owned or controlled by, or acting on behalf of the Government of Libya within the meaning of § 550.304(a). Therefore, one may not rely on the fact that a person is not listed in appendix A or B as a Specially Designated National as evidence that it is not owned or controlled by, or acting

or purporting to act directly or indirectly on behalf of, the Government of Libya. The Treasury Department regards it as incumbent upon all persons governed by the Regulations to take reasonable steps to ascertain for themselves whether persons with whom they deal are owned or controlled by, or acting or purporting to act on behalf of, the Government of Libya, or on behalf of other countries subject to blocking or transactional restrictions administered by FAC.

Section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, provides for civil penalties not to exceed \$10,000 for each violation of the Regulations. Criminal violations of the Regulations are punishable by fines of up to \$250,000 or imprisonment for up to 10 years per count, or both, for individuals and criminal fines of up to \$500,000 per count for organizations. See 50 U.S.C. 1705; 18 U.S.C. 3571.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601-612, does not apply.

List of Subjects in 31 CFR Part 550

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Travel restrictions.

PART 550—LIBYAN SANCTIONS REGULATIONS

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

1. The authority citation for part 550 continues to read as follows:

Authority: 50 U.S.C. 1701-1706; 50 U.S.C. 1601-1651; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 22 U.S.C. 2349aa-8 and 2349aa-9; 3 U.S.C. 301; E.O. 12543, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 3 CFR, 1992 Comp., p. 294.

2. Appendix A to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

**APPENDIX A TO PART 550—
ORGANIZATIONS DETERMINED TO BE
WITHIN THE TERM "GOVERNMENT OF
LIBYA" (SPECIALLY DESIGNATED
NATIONALS OF LIBYA)**

* * * * *

ARAB HELLENIC BANK, S.A.,
80-88 Syngrou Avenue, GR-117 41
Athens, Greece,
P.O. Box 19126, GR-117, 10 Athens,
Greece,
43 Penepistimiou Street, GR-105 64
Athens, Greece.

* * * * *

LAFITRADE HOLDINGS BV,
De Lairesestraat 133, 1075 HJ Amsterdam,
Netherlands,
P.O. Box 75265, 1070 AG Amsterdam,
Netherlands.

* * * * *

SABTINA LIMITED,
530-532 Elder House, Elder Gate, Central
Milton Keynes MK9 1LR, England.

* * * * *

TEKNICA OIL SERVICES (OVERSEAS)
LIMITED,
Cyprus.

* * * * *

TEKNICA (UK) LIMITED,
(f.k.a. FC9063 Limited),
15/17 Lodge Road, St. Johns Wood, London
NW8 7JA, England,
Avon House, 360-366 Oxford Street,
London W1N 9HA, England,
Tripoli, Libya.

* * * * *

TROPICAL AFRICA BANK LIMITED,
(f.k.a. The Libyan Arab Uganda Bank for
Foreign Trade and Development),
P.O. Box 9485, Kampala, Uganda.

* * * * *

3. Appendix A to part 550 is further
amended by adding the following entry
at the end thereof:
Blocked Property:
JARDINE HOUSE,
6 Crutched Friars, London EC3N 2HT,
England.

4. Appendix B to part 550 is amended
by adding the following entries in
alphabetical order, to read as follows:

**APPENDIX B TO PART 550—
INDIVIDUALS DETERMINED TO BE
SPECIALLY DESIGNATED NATIONALS
OF THE GOVERNMENT OF LIBYA**

* * * * *

ARMANI, Dino,
Via San Francesco d'Assisi 10, Milan (MI),
Italy,
Via Abruzzi 94, Milan (MI), Italy,
Viale Abruzzi 24, Milan (MI), Italy.
DOB 20 Sep 20.

* * * * *

ARMANI, Giampiero,
Viale Abruzzi 94, Milan (MI), Italy.
DOB 15 Sep 32.

* * * * *

ARIFI, Dr. Najmeddine Abdalla,

(a.k.a. Dr. Nagmeddin Abdalla Arifi),
P.O. Box 2134, Tripoli, Libya.
DOB 21 Nov. 47.

* * * * *

BERRUIEN, Dr. Nuri Abdalla,
c/o Arabian Gulf Oil Company, P.O. Box
263, Benghazi, Libya.
DOB 18 Mar 46.

* * * * *

BUSENTI, Marcello,
(a.k.a. Busenti, Marcantonio),
Via Alatri 14, Rome (RM), Italy.
DOB 30 May 38.

* * * * *

EL-AGELI, Dr. Mukhtar Ali,
(a.k.a. Dr. Mukhtar Ali El-Ageli; Dr. Mukhtar
Ali Al-Ageli),
Apartment 10, Maida Vale, Little Venice,
London, England,
15/17 Lodge Road, St. Johns Wood, London
NW8 7JA, England.
DOB 23 Jul 44.

* * * * *

EL AMIR, Bahjat Fadel,
5 Rowsham Dell, Gifford Park, Milton
Keynes Bucks MK14 5JS, England.
DOB 01 Jan 42.

* * * * *

EL-KHOJA, Mustapha Ali,
Saied Ibnu Zeid, Tripoli, Libya.

* * * * *

EL NAILI, Smeida El-Hosh,
21 Redlands Drive, Loughton, Milton
Keynes Bucks MK5 8EJ, England.
DOB 19 Feb 44.

* * * * *

ZUGHAIID, Hassan Senoussi,
15/17 Lodge Road, St. Johns Wood, London
NW8 7JA, England.

* * * * *

Dated: September 16, 1994.

Steven I. Pinter,
Acting Director, Office of Foreign Assets
Control.

Approved: September 16, 1994.

R. Richard Newcomb,
Acting Deputy Assistant Secretary (Law
Enforcement).

[FR Doc. 94-25013 Filed 10-5-94; 10:57 am]
BILLING CODE 4810-25-F

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 52

[IN 40-1-6342A; FRL-5067-4]

**Approval and Promulgation of a New
Source Review Implementation Plan;
Indiana**

AGENCY: United States Environmental
Protection Agency (USEPA).
ACTION: Direct final rule.

SUMMARY: The USEPA is approving the
State implementation plan (SIP)
revision submitted by the State of
Indiana for the purpose of meeting
requirements of the Clean Air Act (Act),
as amended in 1990 (amended Act),
with regard to new source review (NSR)
in areas that have not attained the
national ambient air quality standards
(NAAQS). This SIP revision was
submitted by the State to satisfy Federal
requirements for an approvable
nonattainment area NSR SIP for Indiana.
The USEPA is approving the recodified
version of the Indiana permitting rules
to replace those in the existing SIP. The
USEPA is also removing references in
the Code of Federal Regulations to the
construction ban imposed in Lake and
Porter Counties for failure to have an
approved ozone plan since the Clean
Air Act Amendments of 1990 removed
this ban. In the proposed rules section
of this *Federal Register*, USEPA is
proposing approval of and soliciting
public comment on this requested SIP
revision. If adverse comments are
received on this direct final rule,
USEPA will withdraw this final rule
and address the comments received in
a final rule on the related proposed rule
which is being published in the
proposed rules section of this *Federal
Register*. Unless this final rule is
withdrawn, no further rulemaking will
occur on this requested SIP revision.
DATES: This final rule will be effective
December 6, 1994, unless adverse
comments received by December 6,
1994. If the effective date is delayed,
timely notice will be published in the
Federal Register.

ADDRESSES: Comments on this rule
should be addressed to: J. Elmer Bortzer,
Chief Regulation Development Section,
Regulation Development Branch (5AR-
18J), United States Environmental
Protection Agency, Region 5, 77 West
Jackson Boulevard, Chicago, Illinois
60604.

Copies of the State's submittal,
USEPA's analysis of it, and other
information are available for inspection
during normal business hours at the
following location: United States
Environmental Protection Agency,
Region 5, Air and Radiation Division,
Regulation Development Branch, 77
West Jackson Boulevard, Chicago,
Illinois 60604.

A copy of the SIP revision is available
for inspection at the following location:
Office of Air and Radiation (OAR)
Docket and Information Center (Air
Docket 6102), room M1500, United
States Environmental Protection
Agency, 401 M Street SW., Washington,
DC 20460, (202) 260-7548.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, Environmental Engineer, Grants Management and Program Analysis Section, Regulation Development Branch (5AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Anyone wishing to come to the Region 5 offices should first contact Mr. Portanova at (312) 886-3189.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Act. The USEPA has issued a "General Preamble" describing its preliminary views on how USEPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area new source review (NSR) SIP requirements [see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because USEPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this rule and the supporting rationale.

In this final rule on the Indiana nonattainment NSR SIP, USEPA is applying its interpretations taking into consideration the specific factual issues presented.

II. This Action

Section 110(k) of the Act sets out provisions governing USEPA's action on SIP submittals (see 57 FR 13565-13566). Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.¹ Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The USEPA also must determine whether a submittal is complete and therefore warrants further USEPA review and action (see section 110(k)(1) of the Act and 57 FR 13565). The USEPA's completeness criteria for SIP

submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The USEPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(b)(1)(B) if a completeness determination is not made by USEPA within 6 months after receipt of the submission.

The State of Indiana held public hearings on March 22, March 25, and April 1, 1993, to entertain public comment on the requested NSR SIP revision. Following the public hearings, the plan was adopted by the State on July 21, 1993, became effective on December 12, 1993, and was submitted to USEPA on February 25, 1994, as a requested revision to the SIP.

The SIP revision was reviewed by USEPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. The submittal was found to be complete on April 8, 1994, and a letter dated April 8, 1994, was forwarded to the Governor's designee for SIPs, Timothy J. Method, indicating the completeness of the submittal and the next steps to be taken in the review process. In this action, USEPA approves the Indiana nonattainment new source review SIP submittal, and invites public comment on the action. At this time USEPA is also approving the recodified permit rules to replace those in the existing SIP which were approved as APC 19 at 40 CFR 52.770(c)(24). Since the time of this approval, Indiana has recodified its air pollution control rules into Title 326 of the Indiana Administrative Code (326 IAC). As requested by the State on August 15, 1994, USEPA is approving the incorporation of recodified rules into the SIP to replace those previously approved as part of APC 19. This action is intended to make it easier for the public, the State and USEPA to precisely identify what provisions covering permits are part of the SIP.

2. General Nonattainment NSR Requirements

The statutory requirements for nonattainment new source review SIPs and permitting are found at sections 172 and 173 of the Act. The Act requires States to address a number of nonattainment NSR provisions in a SIP submittal to meet the requirements of part D of title I of the Act. What follows is a summary of the requirements and how the Indiana submittal addresses them. A more detailed analysis is contained in the Technical Support

Document for this rule which is available for inspection at the Region 5 address listed above.

The Act requires States to submit the following nonattainment NSR provisions:

a. Provisions to ensure that certain construction bans previously imposed in States pursuant to section 110(a)(2)(I) are lifted.

The amended Act repealed provisions formerly in section 110(a)(2)(I) which required construction bans in certain nonattainment areas. A construction ban was imposed in Lake and Porter Counties pursuant to section 110(a)(2)(I). With some exceptions not applicable here, the amended Act thus lifted such construction bans, including the ban in Lake and Porter Counties. This final rule therefore revises the Code of Federal Regulations to remove references to the construction ban formerly imposed in Lake and Porter Counties for failure to have an approvable ozone plan.

b. Provisions, pursuant to section 173(a)(1), to assure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of reasonable further progress. 326 IAC 2-3-3(a)(5) requires emission offsets to result in reasonable further progress toward attainment of the NAAQS. Also, the definition of emissions offsets baselines in 326 IAC 2-3-3(b) is consistent with reasonable further progress.

c. A provision, pursuant to section 173(c)(1), to allow offsets to be obtained in another nonattainment area if the area has an equal or higher nonattainment classification and emissions from the other nonattainment area contribute to a NAAQS violation in the area in which the source would construct. Indiana has established this provision in 326 IAC 2-3-5.

d. A provision, pursuant to section 173(c)(1), that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be enforceable at the time of permit issuance and in effect by the time the new or modified source commences operation. Indiana has established this provision in 326 IAC 2-3-3(b)(8).

e. A provision, pursuant to section 173(c)(1), to assure that emissions increases from new or modified sources are offset by real reductions in actual emissions. Indiana has established this provision in 326 IAC 2-3-3(a)(5).

f. A provision, pursuant to section 173(c)(2), to prevent emissions reductions otherwise required by the Act from being credited for purposes of satisfying part D offset requirements.

¹ Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

Indiana has established this provision in 326 IAC 2-3-3(b)(9).

g. States must establish provisions, pursuant to sections 172(c)(4) and 173(a)(1)(B), that reflect changes in growth allowances; specifically, (1) the elimination of existing growth allowances in any nonattainment area that received a notice prior to the Amendments that the SIP was substantially inadequate or receives such a notice in the future; and (2) the restriction of growth allowances to only those portions of nonattainment areas formally targeted as special zones for economic development. Indiana does not have any of the above mentioned growth allowances.

h. A provision, pursuant to section 173(a)(5), that requires an analysis of alternative sites, sizes, production processes, and environmental control techniques for proposed sources. This analysis shall demonstrate that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. This shall be a prerequisite to issuing any part D permit. Indiana has established this provision in 326 IAC 2-3-3(a)(4).

i. In accordance with section 173(d), Indiana has committed to report determinations, from nonattainment new source review permits, to the RACT/BACT/LAER clearinghouse in the annual Indiana Department of Environmental Management Air Management Program Workplan.

j. A provision, pursuant to section 173(e), that allows any existing or modified source that tests rocket engines or motors to use alternative or innovative means to offset emissions increases from firing and related cleaning, if four conditions are met: (a) the proposed modification is for expansion of a facility already permitted for such purposes, (b) the source has used all available offsets and all reasonable means to obtain offsets and sufficient offsets are not available, (c) the testing is essential to national security, and (d) the source will comply with an alternative measure designed to offset any emissions increases not directly offset by the source. Indiana has established this provision in 326 IAC 2-3-3(b)(11).

k. Provisions pursuant to section 819 of the Act that effectively exempt activities related to stripper wells from the new additional NSR requirements of new subparts 2, 3, and 4 for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10), ozone, or carbon monoxide (CO) nonattainment areas

classified as serious or less and having a population of less than 350,000. Indiana has not established such provisions. This is acceptable because there are no stripper well activities in the State of Indiana.

l. Provisions, pursuant to section 328, to assure that sources located on an outer continental shelf (OCS) and within 25 miles of the State's seaward boundary, are subject to the same requirements applicable if the source were located in the corresponding onshore area. Indiana has not established such provisions. This is acceptable because Indiana is inland and not located on an OCS.

m. Pursuant to sections 302(z) and 111(a)(3), a definition of "stationary source" to include internal combustion engines other than the newly defined category of "nonroad engines." Indiana has established a definition consistent with these requirements in 326 IAC 2-3-1(aa).

n. Pursuant to section 415, exemptions from nonattainment NSR provisions for installation, operation, cessation, or removal of a qualifying temporary clean coal technology demonstration project. Such projects must still comply with any applicable SIP and all other requirements for the attainment and maintenance of NAAQS. Indiana has established this provision in 326 IAC 2-3-2(i).

o. A provision, pursuant to section 173(a)(3), to assure that owners or operators of each proposed new or modified major stationary source demonstrate, as a condition of permit issuance, the compliance of all other major stationary sources under the same ownership in the State. Indiana has established this provision in 326 IAC 2-3-3(a)(3).

3. Ozone

Pursuant to section 172(c)(5), SIPs must require permits for the construction and operation of new or modified major stationary sources. The statutory permit requirements for ozone nonattainment areas are generally contained in revised section 173, and in subpart 2 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For all classifications of ozone nonattainment areas and for ozone transport regions, States must adopt the appropriate major source thresholds and offset ratios. States must also adopt provisions to ensure that any new or modified major stationary source of nitrogen oxides (NO_x) satisfies the requirements applicable to any major source of volatile organic compounds (VOC),

unless a special NO_x exemption is granted by the Administrator under the provision of section 182(f). For serious and severe ozone nonattainment areas, State plans must implement sections 182(c)(6), (7) and (8) with regard to modifications.

For emissions of VOC and NO_x in ozone nonattainment areas, the State of Indiana has established major source thresholds in 326 IAC 2-3-1(q)(2) and offset ratios in 326 IAC 2-3-3(a)(5)(B) as follows:

Area classification	Major source threshold	Offset ratio	NO _x provisions
Marginal	100 tons per year.	1.1 to 1	Included.
Moderate	100 tons per year.	1.15 to 1	Included.
Serious	50 tons per year.	1.2 to 1	Included.
Severe	25 tons per year.	1.3 to 1	Included.

Indiana does not have an extreme ozone nonattainment area.

In addition, Indiana's plan submittal reflects appropriate modification provisions in 326 IAC 2-3-1(j), including a de minimis level of 25 tons for serious and severe ozone nonattainment areas. 326 IAC 2-3-1(j) sets the major modification threshold level ("de minimis level") at 25 tons per year (tpy) when the net emissions increase from the proposed modification is aggregated with all other net emissions increases from the source over a 5 consecutive calendar year period prior to, and including, the year of the modification. This meets the requirements of section 182(c)(6). The registration requirement exemption levels of 15 pounds per day of VOC and 25 pounds per day of NO_x (326 IAC 2-1-1(b)(2)(B)) are for the purposes of determining applicability of the registration requirements for new sources and modifications to existing sources. These exemption levels do not exclude smaller emissions increases from being counted in the 5 year aggregated net emissions increase analyses required in serious and severe ozone nonattainment areas.

4. Carbon Monoxide

The statutory permit requirements for CO nonattainment areas are generally contained in revised section 173, and in subpart 3 of part D. These are the minimum requirements that States must include in an approvable implementation plan. States must adopt

the appropriate major source threshold and offset ratio.

Indiana has established a major source threshold of 100 tpy (in 326 IAC 2-3-1(q)(1)) and an offset ratio of 1 to 1 (in 326 IAC 2-3-3(a)(5)(A)) for moderate CO nonattainment areas. Indiana does not have a serious CO nonattainment area.

5. PM-10

The statutory permit requirements for PM-10 nonattainment areas are generally contained in revised section 173, and in subpart 4 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For both classifications of PM-10 nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, significance level for modifications, and provisions for PM-10 precursors.

Indiana has established major source thresholds (in 326 IAC 2-3-1(q)(1)), offset ratios (in 326 IAC 2-3-3(a)(5)(A)), modification significance levels (in 326 IAC 2-3-1(x)), and PM-10 precursor provisions as follows:

Area classification	Major source threshold	Offset ratio	Significance level	Precursor provisions
Moderate.	100 tpy	1 to 1.	15 tpy	None.

Indiana does not have a serious PM-10 nonattainment area. Also, Indiana is not required to count PM-10 precursors towards PM-10 emissions. Filter analysis data from ambient monitors in Cook County, Illinois (the data was collected in 1992) were used to assess the significance of PM precursors in the Lake County, Indiana PM nonattainment area. The monitors used are located at the Washington School and the Bright School in the city of Chicago, Illinois. These monitors are located approximately .6 and 1.75 miles, respectively, west the Lake County nonattainment area. Besides the close proximity, these sites are also appropriate because the source mix in southeast Chicago closely approximates that of the Lake County nonattainment area.

The mean sulfate concentration plus the mean nitrate concentration for the Washington school and Bright school monitors were 13.1 µg/m³ and 14.9 µg/m³ respectively. This compares to an average annual background PM concentration of 23 µg/m³ in the Lake County nonattainment area. This illustrates the relative insignificance of the impact of PM precursors, and

supports representing PM precursor impacts as part of the background concentration.

Further considerations also argue against applying the same control requirements for precursor sources as for direct emission sources. The climatology in northwest Indiana is such that precursor emission control for a particular source would not have a significant effect until far downwind. In considering the reductions to be achieved by controlling PM precursors under section 189(e) Congress has indicated that USEPA should take into account reductions achievable from control requirements imposed by other sections or titles of the 1990 Clean Air Act. Title IV of the Clean Air Act mandates significant particulate precursor emission reductions in Indiana, after which the impacts of these sources on particulate matter concentrations will be even less significant.

For these reasons, it is appropriate to conclude that precursors do not contribute significantly to particulate matter concentrations in the Lake County nonattainment area. This finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The USEPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Sulfur Dioxide

The statutory permit requirements for sulfur dioxide (SO₂) nonattainment areas are generally contained in revised section 173, and in subpart 5 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For SO₂ nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

Indiana has established a major source threshold of 100 tpy (in 326 IAC 2-3-1(q)(1)), an offset ratio of 1 to 1 (in 326 IAC 2-3-3(a)(5)(A)), and a modification significance level of 40 tpy (in 326 IAC 2-3-1(x)).

7. Lead

The statutory permit requirements for lead nonattainment areas are generally contained in revised section 173, and in subpart 5 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For lead nonattainment areas, States must adopt

the appropriate major source threshold, offset ratio, and significance level for modifications.

Indiana has established a major source threshold of 25 tpy (in 326 IAC 2-3-1(q)(4)), an offset ratio of 1 to 1 (in 326 IAC 2-3-3(a)(5)(A)), and a modification significance level of 0.6 tpy (in 326 IAC 2-3-1(x)).

8. Permit Exemption Emission Levels

The Indiana nonattainment rules have exemption levels listed in 326 IAC 2-1-1(b)(2). 326 IAC 2-1-1(b)(2) states that a new source or a modification to an existing source with emissions above these exemption levels and below potential emissions of 25 tons per year for any regulated pollutant shall be registered according to 326 IAC 2-1-2. Also, 326 IAC 2-1-1(b)(1) establishes exemption levels for requiring new sources or modifications to existing sources obtain a construction permit under 326 IAC 2-1-3. The exemption levels are available to sources for registration applicability purposes. These levels are applied before any netting calculations. Sources cannot net emissions increases and decreases and then use net emissions in the exemption test. These do not affect the provisions for special modifications.

9. Definition of Federally Enforceable

The Indiana 326 IAC regulations do not include a definition of "federally enforceable". On July 13, 1994, Pamela Carter, Attorney General of the State of Indiana, sent a letter to USEPA clarifying Indiana's interpretation of the definition of federally enforceable. The letter states that federally enforceable, e.g. as used in 326 IAC 2-3-1, should be interpreted in accordance with the Federal definition at 40 CFR 51.165(a)(1)(xiv). The USEPA, therefore, interprets 'federally enforceable' as used in the Indiana rules to be defined according to the Federal definition.

10. Recodification of SIP Approved Regulations

The previous regulations approved into the Indiana SIP establishing a new source review program were contained in APC-19 and codified at 40 CFR 52.770(c)(24). These regulations provided for a new source review program pursuant to 40 CFR part 51 subpart I, including both minor and major new source review. USEPA is approving Indiana's SIP revisions not only to adopt the changes referenced elsewhere in this notice but also to recodify the previously approved new source review rules, formerly in APC-19 and currently in 326 IAC 2, based on a review of the entire submission, USEPA

has determined that the new source review regulations contained in 326 IAC 2 submitted by the state, including both the rule changes and the recodification, meet the requirements of part D of title I of the Act. In addition, these rules are being approved pursuant to 40 CFR 51 Subpart I, for both major and non-major new source review except not for PSD requirements in 40 CFR 51.166.

11. Plantwide Source Definition

On October 14, 1981, the USEPA revised the new source review regulations in 40 CFR Part 51 to give states the option of adopting the "plantwide" definition of stationary source which provides that only physical or operational changes that result in a net increase in emissions at the entire plant require a NSR permit. For example, if a plant decreased emissions by the same amount at another piece of process equipment, then there would be no net increase in emissions at the plant and therefore, no "modification" to the "source." The plantwide definition is in contrast to the so-called "dual" definition for definition of structure like that in the 1979 offset ruling (44 FR 3274), which has much the same effect as the dual definition. Under the dual definition, the emissions from each physical or operational change are gauged without regard to reductions elsewhere at the plant.

In the October 1981 rule, USEPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766-69). In its view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of part D of title I of the Act. The Act provided for reasonable further progress (RFP) and timely attainment of National Ambient Air Quality Standards (NAAQS), while also allowing for maximum state flexibility and economic growth. The USEPA recognized that the plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the states under the demands of Part D eventually would have adequate SIPs in place. For instance, USEPA stated:

Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with Part D [46 FR 50767].

USEPA also indicated that under the plantwide definition, new equipment would still be subjected to any

applicable new source performance standard and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, EPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, but the advantages from the standpoints of state flexibility and economic growth. It regarded the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate Part D plans.

As a result, EPA ruled that a state wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a state had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that USEPA later approved, then the state needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (46 FR 50767 and 50769).

In 1984, the Supreme Court upheld USEPA's action as a reasonable accommodation of the conflicting purposes of Part D of Title I of the Act, and hence, well within USEPA's broad discretion. *Chevron, U.S.A. v. NRDC*, 104 S.Ct. 2778 (1984). Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing state flexibility and allowing reasonable economic growth. Likewise, the Court recognized that USEPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (see 104 S.Ct. at 2792). In this rule USEPA generally reaffirms the rationales stated in the 1981 rulemaking. Those rationales were left undisturbed by the Supreme Court decision.

The SIP revision USEPA is approving in this action substitutes a plantwide definition for a dual definition in Indiana's existing nonattainment NSR program. In obtaining USEPA approval of its original part D SIP, Indiana did not rely on any emission reductions from the operation of its existing NSR program. Also, Indiana uses a plantwide definition of source. A July 22, 1987 letter from Timothy J. Method, then Acting Assistant Commissioner, Office of Air Management, Steve Rothblatt then Chief of the Air and Radiation Branch, states Indiana's rationale for implementing the plantwide definition. The letter further states that in obtaining USEPA approval of its original part D

SIP, Indiana did not rely on emission reductions from its existing NSR program. Indiana has nonattainment areas for sulfur dioxide, lead, ozone, and fine particulate matter. Indiana has submitted several revisions required by the amended Act prior to attainment of the NAAQS by the statutory attainment dates, which range from 1994 to 2007 for the nonattainment areas in Indiana. For example, Indiana has submitted revisions for VOC and NO_x RACT, Stage II vapor recovery, clean fuel fleets, and 15% VOC reduction, employee commute options vehicle inspection and maintenance and the 1990 base year ozone emissions inventory. These revisions have been or will be acted on by USEPA in subsequent actions.

Indiana's plantwide definition of source is consistent with the NSR requirements for ozone nonattainment areas in the Clean Air Act Amendments of 1990. Lake and Porter Counties are classified as a "severe" ozone nonattainment area. Therefore, the attainment date for the area is now 2007 (see section 181(a)), and Indiana must meet an independent requirement to reduce VOC emissions by fifteen percent in the first six years after 1990 and three percent per year thereafter (see section 182(b)(1) and (c)(2)(B)).

While Indiana must account for the impact of its plantwide definition of source in the attainment and reasonable further progress demonstrations it submits under the amended Act, it is clear that Congress anticipated States could use the plantwide definition of source when devising such plans.

The amended Act includes provisions regulating the application of the plantwide definition of source, including a special rule for serious and severe ozone nonattainment areas for determining "de minimis" net increases in VOC emissions from source modifications (section 182(c)(6)). It is clear that Congress anticipates states will often continue to employ USEPA's plantwide definition of source in ozone nonattainment areas (except in extreme areas, see section 182(e)(2)), provided the states can also meet the new reasonable further progress requirements in the Act. In addition, it is important to note that the 1990 Amendments' adoption of new future attainment deadlines has mooted concerns regarding the approvability of a plantwide source definition where a state has missed prior attainment deadlines. Congress has given Indiana additional time to submit a revised SIP to provide for attainment by the revised deadlines. As described above, Indiana has already begun to meet its obligations under the 1990 Amendments.

USEPA expects to publish a proposed rule in late 1994 to implement the changes under the amended Act in the NSR provisions in parts C and D of title I of the Act. USEPA may refer to the proposed rule as the most authoritative guidance available regarding the approvability of the NSR SIP submittals. USEPA expects to take final action to promulgate a rule to implement the parts C and D changes sometime during 1995. At that time, USEPA will review the NSR SIPs of all states to determine whether further SIP revisions are necessary. Prior to USEPA approval of a State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date (e.g. November 15, 1992 for ozone nonattainment areas). This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991 and September 3, 1992.

As explained in the March 11 memorandum, USEPA does not believe Congress intended to mandate the more stringent Title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to permit consistent with requirements in their current NSR SIPs during that period, or apply 40 CFR part 51, appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3 memorandum also addressed the situation where States did not submit the part D NSR SIP requirements or revisions by the applicable statutory deadline. For permit applications complete by the SIP submittal deadline, States may issue final permits under the prior NSR rules, assuming certain conditions in the September 3 memorandum are met. However, for applications completed after the SIP submittal deadline, USEPA will consider the source to be in compliance with the Act only where the source obtains a permit that is consistent with the substantive new NSR part D provisions in the amended Act from the State. USEPA believes this guidance continues to apply to permitting pending final action on NSR SIP submittals.

III. Rulemaking Action

Section 110(k) of the Act sets out provisions governing USEPA's action on SIP submittals (see 57 FR 13565-66). The USEPA is taking the following final rulemaking actions:

1. The USEPA is approving the requested SIP revision submitted on March 7, 1994. The submittal consists of

Title 326 IAC 2-1-1, 2-1-2, 2-1-3, 2-3-1, 2-3-2, 2-3-3, and 2-3-5. The State of Indiana has submitted a complete plan to implement the new source review provisions of part D. Each of the program elements mentioned above was properly addressed.

2. The USEPA is also approving the recodified permitting rules to replace those in the existing SIP which were approved as APC 19 at 40 CFR 52.770(c)(24). The incorporation of the recodified version of these Indiana rules into the SIP will make it easier for the public, the State and USEPA to identify precisely what permitting provisions are part of the SIP. Some confusion surrounding what State rules were part of the permitting SIP has existed since Indiana recodified its APC rules into the Title 325 of the Indiana Administrative Code (IAC) and subsequently into Title 326 IAC. After the effective date of this final rule all of Indiana's permitting SIP rules will be contained in Title 326 of the IAC.

3. Consistent with section 110(n)(3) of the amended Act the USEPA is taking this opportunity to remove references in 52.773(i) and 52.777(d) to the sanctions formerly imposed on Lake and Porter Counties which were lifted by the 1990 Act amendments.

Because USEPA considers these actions to be noncontroversial and routine, we are approving them without prior proposal. This action will become effective on December 6, 1994. However, if we receive adverse comments on these actions by November 7, 1994, then USEPA will publish a final rule that withdraws the action, and will address the comments received in the final rule on the requested SIP revision which has been proposed for approval in the proposed rules section of this Federal Register. The public comment period will not be extended or reopened.

IV. Executive Order (EO) 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or 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.

V. 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 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 state action. The Act forbids USEPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 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 December 6, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: August 25, 1994.

Valdas V. Adamkus,
Regional Administrator.

For the reason 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)(94) to read as follows:

§ 52.770 Identification of plan.

(c) * * *

(94) On February 25, 1994, Indiana requested a revision to the State Implementation Plan (SIP) in the form of amendments to Title 326: Air Pollution Control Board of the Indiana Administrative Code (326 IAC) 2-1-1 and 2-1-3 which were intended to satisfy the additional new source review requirements of the Clean Air Act Amendments of 1990. The USEPA, at this time, is also approving the incorporation of permitting rules recodified as Article 2. Permit Review Rules of 326 IAC into the SIP to replace APC 19 which was incorporated into the Indiana SIP at 40 CFR 52.770 (c)(24).

(i) Incorporation by reference.

(A) Amendments to Title 326 IAC 2-1-1, 2-1-2, 2-1-3, 2-3-1, 2-3-2, 2-3-3, and 2-3-5. Filed with the Secretary of State November 12, 1993, effective December 13, 1993.

(B) Amendments to Title 326 IAC 2-1-4, 2-1-5, 2-1-6, 2-1-7, 2-1-9, 2-1-10, 2-1-11, 2-1-12, 2-1-13, 2-3-4. Filed with the Secretary of State March 10, 1988, effective April 9, 1988.

3. Section 52.773 is amended by revising paragraph (i) to read as follows:

§ 52.773 Approval status.

(i) The Administrator finds that Indiana's ozone plan for Lake and Porter Counties, which was required to be submitted by July 1, 1992, does not satisfy all the requirements of part D, title 1 of the Clean Air Act and, thus, is disapproved. See §§ 52.770(c)(69) and 52.770(d). The disapproval does not affect USEPA's approval (or conditional approval) of individual parts of Indiana's ozone plan and they remain approved.

4. Section 52.777 is amended by revising paragraph (d) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

(d) Part D—Disapproval. The 1982 Indiana plan for Lake and Porter County is disapproved because it does not assure the attainment and maintenance of the NAAQS there. See §§ 52.770(c)(69) and 52.773(i). The disapproval does not affect USEPA's approval (or conditional approval) of individual parts of Indiana's ozone plan and they remain approved.

5. Section 52.780 is amended by adding paragraph (h) to read as follows:

§ 52.780 Review of new sources and modifications.

(h) On March 7, 1994, Indiana requested a revision to the State Implementation Plan (SIP) for New Source Review (NSR) to satisfy the requirements of the Clean Air Act Amendments of 1990. The Indiana 326 IAC regulations do not include a definition of "federally enforceable". On July 13, 1994, Pamela Carter, Attorney General of the State of Indiana, sent a letter to USEPA clarifying Indiana's interpretation of the definition of federally enforceable. The letter states that federally enforceable, e.g. as used in 326 IAC 2-3-1, should be interpreted in accordance with the federal definition at 40 CFR 51.165(a)(1)(xiv). The USEPA took the opportunity of rulemaking on the State's submittal to recodify the permitting SIP to conform to Title 326 the Indiana Administrative Code.

[FR Doc. 94-24837 Filed 10-6-94; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 86

[FRL-5087-2]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Regulations Requiring Tampering Prevention for On-Board Diagnostic Systems

AGENCY: Environmental Protection Agency.
ACTION: Notice of Court Decision Regarding Agency Regulations.

SUMMARY: This notice is intended to inform the public that the United States Court of Appeals for the District of Columbia Circuit has ordered that regulations published by the Agency intended to prevent tampering with vehicle on-board emissions diagnostic systems be vacated.

DATES: The court order vacating the agency's anti-tampering regulations was filed on May 19, 1994.

FOR FURTHER INFORMATION CONTACT:

Todd Sherwood, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone (313) 668-4405 or Michael Horowitz, Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street S.W. (2344), Washington, D.C. 20460, Telephone (202) 260-8883.

SUPPLEMENTARY INFORMATION: On

February 19, 1993, the Federal Register published the Environmental Protection Agency's (the Agency's) rulemaking requiring on-board emission diagnostics systems on 1994 and later model year light-duty vehicles and light-duty trucks (58 FR 9468). This rulemaking promulgated regulations that included provisions requiring vehicle manufacturers to install on affected vehicles:

"* * * features to deter modification except as authorized by the manufacturer. Any reprogrammable computer codes or operating parameters must be resistant to tampering and the computer and any related maintenance instructions must conform to the provisions of SAE J2186 "E/E Data Link Security." (SEP91). A removable calibration memory chip shall be potted or encased in a sealed container * * *. Demonstration of compliance with the tampering protection section of the California OBD II requirements shall satisfy the requirements of this section through the 1998 model year." 40 CFR § 86.094-18 (the "anti-tampering regulation".)

Several associations representing aftermarket automotive parts manufacturers, rebuilders, distributors, retailers and automotive service and repair providers ("the petitioners") subsequently petitioned for review of the rulemaking by the United States Court of Appeals for the District of Columbia Circuit (Docket No. 93-1277).

On May 9, 1994, the Agency and the petitioners ("the parties") filed with the Court a Joint Motion to Remand the Administrative Record to the Agency "in order for EPA to reconsider the anti-tampering provisions, to address any tensions between these provisions and the access and information availability requirements [of sections 202(m)(4) and 202(m)(5) of the Act], and, if necessary, to promulgate new regulations addressing EPA's concerns about tampering." The parties further requested the Court to order that the anti-tampering provisions (and the incorporation of California's anti-tampering regulations) be vacated and be declared void *ab initio*.