Court of Appeals for the appropriate circuit by October 11, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607(b)(2).)

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 Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA 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 CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs 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. section 7410(a)(2) and 7410(k)(3).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 182 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action will impose any new requirements. Since such sources are already subject to these regulations under State law, no new requirements are imposed by this approval. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended 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) of the APA as amended.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: July 22, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding (c)(143) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(143) Revisions to chapter 1200–3–18 ''Volatile Organic Compounds'' were submitted by the Tennessee Department of Air Pollution Control (TDAPC) to EPA on June 3, 1996, and June 4, 1996.

(i) Incorporation by reference.

(A) Rule 1200–3–18–.01, paragraphs (26) and (87), effective on August 10, 1996.

(B) Rule 1200–3–18–.06 ''Handling, Storage, Use, and Disposal of Volatile Organic Compounds (VOCs)'', effective on August 11, 1996.

(C) Rule 1200–3–18–.44 ''Surface Coating of Plastic Parts'', effective on August 10, 1996.

(D) Rule 1200–3–18–.45 ''Standards of Performance for Commercial Motor Vehicle and Mobile Equipment Refinishing Operations'', effective on January 17, 1996.

(E) Rule 1200–3–18–.48 ''Volatile Organic Liquid Storage Tanks'', effective on August 2, 1996.

(ii) Other material. None.

[FR Doc. 96–21694 Filed 8–26–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MA–46–1–7194a; A–1–FRL–5552–9]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Marine Vessel Transfer Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision contains a regulation to reduce volatile organic compound (VOC) emissions from marine vessel loading operations. The intended effect of this action is to conditionally approve this regulation into the Massachusetts SIP. This action is being taken in accordance with the Clean Air Act.

DATES: This action will become effective October 28, 1996, unless notice is received by September 26, 1996, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th Floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW. (LE–131), Washington, D.C. 20460; and the Division of Air Quality Control, Commonwealth of Massachusetts, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On January 11, 1995, the Massachusetts Department of Environmental Protection submitted a formal State Implementation Plan (SIP) submittal containing a new regulation 310 CMR 7.24(8) ''Marine Volatile Organic Liquid Transfer'' as well as amendments to 310 CMR 7.00 ''Definitions.'' These regulations had been recently adopted pursuant to the reasonable further progress requirements and the volatile organic compound reasonable available control technology (VOC RACT) requirements of the Clean Air Act (CAA) [Sections 182(b)(1) and 182(b)(2)(C)]. In addition, on March 25, 1995, DEP submitted additional documentation indicating that these regulations became effective on January 27, 1995.

Background

Under the pre-amended Clean Air Act (i.e., the Clean Air Act before the enactment of the amendments of November 15, 1990), ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of control technique guideline (CTG) documents, establishing a ''presumptive norm'' for RACT for various categories of VOC sources. The three sets of CTGs were: (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under Section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under Section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

On November 15, 1990, amendments to the Clean Air Act were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. §§ 7401–7671q. Pursuant to the 1990 Amendments, all of Massachusetts was classified as serious nonattainment for ozone (56 FR 56694 (Nov. 6, 1991)).

Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the Section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the 1990 amendments to the Act; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, i.e., non-CTG sources. Also, under Section 182(c) of the Act, the major source definition for serious nonattainment areas was lowered to include sources that have a potential to emit 50 tons or greater of VOCs per year.

In response to the Act's requirement to regulate major non-CTG VOC sources, Massachusetts adopted 310 CMR 7.24(8) ''Marine Vessel Transfer Operations'' and submitted this rule to EPA as a SIP revision on January 11, 1995. Massachusetts' marine vessel rule is briefly summarized below.

310 CMR 7.24(8) ''Marine Vessel Transfer Operations''

This regulation contains requirements for reducing VOC emissions from loading events in which organic liquid is loaded onto marine tank vessels or in which any liquid is loaded into a marine tank vessel which previously held an organic liquid. Massachusetts' rule prohibits a loading event to occur unless:

(1) marine tank vessel VOC emissions are limited to 2 lbs per 1,000 bbls of organic liquid transferred; or

(2) marine tank vessel VOC emissions are reduced at least 95 percent by weight from uncontrolled conditions when using a recovery device or at least 98 percent by weight from uncontrolled conditions when using a combustion device.

This regulation also limits the loading of marine tank vessels to those vessels that are vapor tight.

Massachusetts' marine vessel rule will reduce VOC emissions. VOCs contribute to the production of ground level ozone and smog. This regulation was adopted as part of an effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following is EPA's evaluation of 310 CMR 7.24(8).

EPA's Evaluation of Massachusetts' Submittal

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations, as found in Section 110 and Part D of the Act and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents. The specific guidance relied on for this action is referenced within the technical support document and this notice. For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared a series of CTG documents. The CTGs are based on the underlying requirements of the Act and specify presumptive norms for RACT for specific source categories. EPA has not yet developed CTGs to cover all sources of VOC emissions. Further interpretations of EPA policy are found in, but not limited to, the following: (1) the proposed Post-1987 ozone and carbon monoxide policy, 52 FR 45044 (November 24, 1987); (2) the document entitled, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice,'' otherwise known as the ''Blue Book'' (notice of availability was published in the Federal Register on May 25, 1988); and (3) the ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology,'' (Model VOC RACT Rules) issued as a staff working draft in June of 1992. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

In addition, Section 183(f) of the amended Act specifically requires EPA to promulgate RACT standards to reduce VOC emissions from the loading and unloading of marine tank vessels. Furthermore, on November 12, 1993 (58 FR 60021), marine vessels were added to the list of those categories for which EPA will promulgate a maximum achievable control technology (MACT) standard. On September 19, 1995 (60 FR

48388), EPA promulgated both RACT and MACT standards for marine tank vessels.

EPA has evaluated Massachusetts' marine vessel rule and has found that it is generally consistent with EPA's national marine vessel rule and current EPA guidance. There are, however, two outstanding issues associated with the Commonwealth's regulation.

Outstanding Issues

1. Lack of Monitoring Requirements

Massachusetts' regulation requires that, upon initial startup of the control equipment, the owner or operator of a marine terminal conduct an initial performance test in order to demonstrate compliance. However, as was stated in EPA's public hearing comments on Massachusetts' proposed version of this rule, the regulation should also require the facility to demonstrate continued compliance as is required under EPA's national marine vessel rule (40 CFR § 63.564). Specifically, the regulation should require that certain parameters be monitored continuously while marine vessel loading or ballasting operations are occurring and that records be kept of all measurements needed to demonstrate compliance with the applicable standard including all data collected in any periods of operation during which the previously established parameter boundaries are exceeded.

2. Emission Limits for Ballasting Operations

Massachusetts' marine vessel rule applies to the loading of an organic liquid and to ballasting operations. However, the emissions limitations stated in Section 7.24(8)(c)(1) of the rule only apply to ''loading events.'' This term, as defined in 310 CMR 7.00, does not include ballasting operations. Although Sections 7.24(8)(c)(2) and 7.24(8)(d) of Massachusetts' marine vessel rule do require control equipment to be used during ballasting, these sections do not require specific emission limitations to be met during ballasting operations.

EPA's national marine vessel rule does not apply to ballasting operations. The absence of emission limitations for ballasting operations in Massachusetts' rule, however, is inconsistent with the information contained in Massachusetts' reasonable further progress (RFP) plan regarding the reduction in VOC emissions that is expected to result from the implementation of this rule. Specifically, Massachusetts' 1990 base year inventory shows that uncontrolled marine vessel transfer operations result in 3.2 tons of VOC per summer day (tpsd), which includes 2.8 tpsd from ballasting and 0.4 tpsd from loading operations. Massachusetts' marine vessel rule SIP submittal states that ballasting emissions will be reduced by 2.1 tpsd. This statement assumes that ballasting operations are subject to a 95 percent control efficiency requirement (i.e., 0.95 control efficiency x 0.8 rule effectiveness x 2.8 tpsd uncontrolled = 2.1 tpsd reduction). Therefore, Massachusetts' marine vessel rule should require that ballasting operations be subject to the emission limitations stated in Section 7.24(8)(c)(1)(B) of the rule.

Massachusetts' regulation and EPA's evaluation are detailed in a memorandum, dated April 23, 1996, entitled ''Technical Support Document—Massachusetts—Marine Vessel Rule.'' Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA is publishing this action without prior proposal and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 28, 1996, unless adverse or critical comments are received by September 26, 1996.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then 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 October 28, 1996.

Final Action

EPA is conditionally approving 310 CMR 7.24(8) ''Marine Vessel Transfer Operations'' and the associated 310 CMR 7.00 ''Definitions'' into the Massachusetts SIP.

Under Section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. On February 1, 1996, Massachusetts submitted a written commitment to address the issues outlined above (i.e., the lack of monitoring requirements and the lack of emission limits for ballasting operations) within one year of the date of publication of EPA's conditional approval. If the Commonwealth fails to do so, this approval will become a disapproval on October 28, 1997. EPA will notify the Commonwealth by letter that this action has occurred. At that time, the conditionally approved submittal will no longer be a part of the approved Massachusetts SIP. EPA subsequently will publish a notice in the notice section of the Federal Register notifying the public that the conditional approval automatically converted to a disapproval. If the Commonwealth meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved submittal will also be disapproved at that time. If EPA approves the new submittal, the newly submitted regulations will be fully approved and will replace the conditionally approved regulations in the SIP.

If the conditional approval is converted to a disapproval, such action will trigger EPA's authority to impose sanctions under Section 110(m) of the CAA at the time EPA issues the final disapproval or on the date the Commonwealth fails to meet its commitment. In the latter case, EPA will notify the Commonwealth by letter that the conditional approval has been converted to a disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the federal implementation plan (FIP) requirement under Section 110(c).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under Section 110 and subchapter I, Part D of the CAA 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 CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs 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).

If the conditional approval is converted to a disapproval under Section 110(k), based on the Commonwealth's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing State requirements nor does it substitute a new federal requirement.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this State Implementation Plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Sections 182(b) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866.

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

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 October 28, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Dated: July 22, 1996.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of 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 W—Massachusetts

2. Section 52.1119 is amended by adding paragraph (a)(2) to read as follows:

§ 52.1119 Identification of plan-conditional approval.

* * * * * *

(a) * * *

(2) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on January 11, 1995 and March 29, 1995.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection dated January 11, 1995 and March 29, 1995 submitting a revision to the Massachusetts State Implementation Plan.

(B) 310 CMR 7.24(8) ''Marine Vessel Transfer Operations'' effective in the Commonwealth of Massachusetts on January 27, 1995.

(C) Definitions of ''combustion device,'' ''leak,'' ''leaking component,'' ''lightering or lightering operation,'' ''loading event,'' ''marine tank vessel,'' ''marine terminal,'' ''marine vessel,'' ''organic liquid,'' and ''recovery device'' in 310 CMR 7.00 ''Definitions'' effective in the Commonwealth of Massachusetts on January 27, 1995.

(ii) Additional materials.

(A) Letter from the Massachusetts Department of Environmental Protection dated February 1, 1996 committing to address the outstanding issues associated with 310 CMR 7.24(8) as identified by EPA in a letter dated September 19, 1995.

(B) Nonregulatory portions of the submittal.

[FR Doc. 96–21692 Filed 8–26–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 014–0014; FRL–5553–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, El Dorado County Air Pollution Control District, Kern County Air Pollution Control District, Placer County Air Pollution Control District, Santa Barbara County Air Pollution Control District, and the South Coast Air Quality Management District; Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule