Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 209—ADMINISTRATIVE PROCEDURES

Permits for Activities In Navigable Waters or Ocean Waters

On 23 April 1976 the Department of the Army acting through the Chief of Engineers published proposed regulations in the FEDERAL REGISTER to amend 33 CFR 209.120, paragraph (h) (2) (ii) with respect to the establishment of fees for processing applications for Department of the Army permits submitted in accordance with sections 9 and 10 of the River and Harbor Act of 1899, section 404 of the Federal Water Pollution Control Act Amendments of 1972 and the Marine Protection, Research and Sanctuaries Act of 1972. We have received comments from Senator Thomas F. Eagleton, The U.S. Department of Agriculture, Mr. J. Sydney Boone and the following industrial concerns:

Florida Power Corporation, Columbia Gas System Service Corporation, Ketchikan Pulp Company, Northern States Power Company.

Our final regulation has been modified to reflect the needed improvements that surfaced as a result of the public review as follows:

(a) Removal of the fee provisions from paragraph (h) (2) (ii) of 33 CFR 209.120 and redesignation of them as paragraph (h) (5). The opening of paragraph (h) (2) (ii) begins; "If the activity includes the discharge of dredged or fill material * * *." which tends to suggest that fees are required for section 404 activities only.

(b) Clarification of the terms "commercial versus non-commercial." A fee of $100.00 will be charged for permit applications when the planned or ultimate purpose of the project is commercial or industrial in nature and is in support of operations that charge for the production, distribution or sale of goods or services. A $10.00 fee will be charged for permit applications when the work is non-commercial in nature and provides personal benefits that have no connection with a commercial enterprise.

(c) Payment of fees. If the District Engineer determines after his review that the issuance of a permit is in the public interest, he will require payment of the applicable fee ($10/$100) prior to issuing the permit. No fees are required when the permit application is either withdrawn or the permit denied. This method of fee collections will eliminate the need for the applicant to submit a refundable fee with his permit application and the subsequent administrative burden associated with the handling of suspense fund accounts.

Pursuant to The Independent Offices Appropriation Act (31 U.S.C. 483a) and the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1414 (b)) the Department of the Army, acting through the Chief of Engineers is publishing the final regulations as follows:

§ 209.120 Permits for Activities in Navigable Waters or Ocean Waters.

* * * * *

(h) Applications for Authorizations.

(1) * * *

(2) * * *

(i) * * *

(ii) If the activity includes the discharge of dredged or fill material in the navigable waters of the transportation of dredged material for the purpose of dumping it in the ocean waters, the applications must include the source of the material, a description of the type, composition and quantity of the material, the method of transportation and disposal of the material, and the locations of the disposal site. Certification under section 401 of the Federal Water Pollution Control Act is required for such discharges into navigable waters.

(iii) * * *

* * * * *

(5) Fees are required for permit application under section 404 of the Federal Water Pollution Control Act Amendments of 1972, section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 and sections 9 and 10 of the River and Harbor Act of 1899. A fee of $100.00 will be charged when the planned or ultimate purpose of the project is commercial or industrial in nature and is in support of operations that charge for the production, distribution or sale of goods or services. A $10.00 fee will be charged for permit applications when the work is non-commercial in nature and provides personal benefits that have no connection with a commercial enterprise. The final decision as to basis for fee (commercial vs. non-commercial) shall be solely the responsibility of the District Engineer. No fee will be charged if the applicant withdraws his application at any time prior to issuance of the permit and/or if his application is denied. Collection of the fee will be deferred until the applicant is notified by the District Engineer that a public interest review has been completed and that the proposed activity has been determined to be in the public interest. Upon receipt of this notification the applicant will forward a check or money order to the District Engineer, made payable to the Treasurer of the United States. The permit will then be issued upon receipt of the application fee. Multiple fees are not to be charged if more than one law is applicable. Any modification significant enough to require a permit will also require a fee. No fee will be assessed when a permit is transferred from one property owner to another. No fees will be charged for time extensions or general permits. Agencies or instrumentalities of Federal, State or local governments will not be required to pay any fee in connection with the applications for permits. This fee structure will be reviewed from time to time.

* * * * *

Dated: November 30, 1976.

Approved:

VICTOR V. VEYSEY,
Assistant Secretary of the Army (Civil Works).

[FR Doc.76-37438 Filed 12-20-76;8:45 am]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

PART III—GENERAL INFORMATION ON POSTAL SERVICE

Loose and Undeliverable Mail; Proposed Changes In Handling Procedures; Corrections; Effective Dates

In FR Doc. 76-36054 appearing at page 53677 in the FEDERAL REGISTER of Wednesday, December 8, 1976 the following changes should be made:

1. On page 53678, in the right hand column, in paragraph .442b, the words "item and show the" in the fifth line should be deleted.

2. On page 53679, in the left hand column, in item 3, the number "158.41" in the first line should be changed to "159.41".

In the FEDERAL REGISTER Document, referred to above the Postal Service indicated in the middle column on page 53678 that, except for dead parcel service area realignments, which are scheduled to become effective on January 20, 1977, all the proposed changes in handling procedures for loose and undeliverable mail would be made effective immediately on an interim basis. This was inaccurate in two respects: (1) The Postal Service did not intend to make effective immediately the proposed amendment of 159.721 b and g, under which the retention period for loose matter and for third- and fourth-class dead mail at bulk mail centers and the last office of address would be reduced from 60 to 30 days. No change will be made in this provision until all comments have been received and analyzed. (2) The Postal Service did not make the other proposed changes effective immediately upon publication in the FEDERAL REGISTER. These changes were put into effect on an interim basis on December 16, 1976.

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc.76-37422 Filed 12-20-76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 660-7]

PART 51—REQUIREMENTS FOR PREPARATION, ADAPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Air Quality Standards; Interpretative Ruling

The Interpretative Ruling appearing below addresses the issue of whether and

to what extent national air quality standards established under the Clean Air Act may restrict or prohibit growth of major new or expanded stationary air pollution sources. The ruling provides in general that a major new source may locate in an area with air quality worse than a national standard only if stringent conditions can be met. These conditions are designed to insure that the new source's emissions will be controlled to the greatest degree possible; that more than equivalent offsetting emission reductions ("emission offsets") will be obtained from existing sources; and that there will be progress toward achievement of the standards. While the ruling is effective now, EPA is actively soliciting public comment on the ruling's basic policies and detailed provisions.

BACKGROUND

Section 110 of the Clean Air Act requires State Implementation Plans (SIP's) to insure that primary (health-related) national ambient air quality standards be attained as expeditiously as practicable, but not later than mid-1975 (except in those relatively few areas where an extension to mid-1977, at the latest, has been granted pursuant to § 110(e)). Secondary (welfare-related) ambient standards are to be met within a "reasonable time." Most SIP's have specified secondary standard attainment dates which are the same as the primary standard attainment dates.

Once the ambient standards have been attained, they must be maintained [section 110(a)(2)(B)]. By virtue of the Act's attainment and maintenance requirements and EPA's regulations appearing at 40 CFR 51.18, promulgated in August 1971, all SIP's must contain regulations requiring preconstruction review and disapproval of new or modified air pollution sources which would "interfere with" the attainment or maintenance of a national ambient air quality standard (NAAQS). Since the NAAQS attainment dates have already passed (or will soon pass) and the ambient standards have not been attained in many areas of the country, questions have arisen as to whether, and to what extent, new stationary sources may legally be permitted to construct in such areas. In response to these questions, EPA's interpretative ruling on the preconstruction review requirements of 40 CFR 51.18 is set forth below.

PUBLIC PARTICIPATION AND REVIEW OF RULING

A draft of the ruling was sent to all State air pollution control agencies in April, 1976, for review and comment. Their comments are available for public inspection at the EPA Public Information Reference Unit, 401 M Street, SW, Washington, D.C. 20460. In addition, EPA officials have discussed various drafts of the ruling in meetings with representatives of the State and Territorial Air Pollution Program Administrators, Association of Local Air Pollution Control Officials, National Governors Conference, National Conference of State Legislatures, U.S. Conference of Mayors/National League of Cities, National Association of Counties, AFL–CIO, industrial groups, and environmental groups.

EPA recognizes that the ruling has profound national policy implications and that even more extensive public debate is needed on the issues of whether (and how) economic growth may be accommodated where ambient air quality standards are being exceeded. EPA therefore is actively soliciting public comment on the ruling, in regard to both its basic policies and its detailed provisions. EPA may make adjustments to the ruling as warranted by the public comment. (Information regarding the nature and timing of the public comment is provided below.) EPA believes that these important national issues must ultimately be resolved by Congress through more explicit guidance in the Clean Air Act; hopefully, the publication of the ruling and the resulting public comments will provide a useful focus for legislative deliberations.

IMPLEMENTATION AND ENFORCEMENT OF INTERPRETATIVE RULING

In all but six SIP's, EPA has approved the State's own preconstruction review regulation adopted in conformance with 40 CFR 51.18. The ruling is therefore largely for the benefit of State and/or local reviewing authorities.[1] Only in the six States where EPA has been required to promulgate its own preconstruction review regulation in place of deficient State regulations will the provisions of the ruling be implemented directly by EPA (through its Regional Offices).

The ruling in no way requires a State or local reviewing authority to approve a source that meets the requirements set forth therein, since the authority to go beyond minimum Federal requirements is clearly protected by Section 116 of the Act. Available options, such as emission offsets, are allowable only at the discretion of local and State government. There are many reasons why a State or local authority might decide to prohibit a new source in addition to the criteria set forth in the ruling. Examples are the availability of alternative sites that are more environmentally acceptable, a decision that a proposed emission offset would not be in the best interest of the community, or a determination that allowing the new source would not in any case be in the best interest of the community.

Because interested parties in the public and private sector have (as noted above) been informally apprised of the basic provisions of the ruling and have had the opportunity to provide informal comments, and because the preconstruction review process is already being carried out under 40 CFR 51.18 (with continually-arising issues needing resolution), in EPA's judgment it is in the public interest to make the ruling immediately effective upon publication in the FEDERAL REGISTER. It would be highly impracticable merely to propose the ruling and defer its effectiveness, since both reviewing authorities and applicants for permits would be presented with even greater uncertainty in the interim period. As an articulation of the minimum requirements for preconstruction review of new sources pursuant to 40 CFR 51.18, the ruling's effect is to declare that any permits which are more lenient than allowed by the ruling fail to comply with the requirements of the Clean Air Act. Where a State issues (or has issued) a permit contrary to the Act's requirements, EPA can take legal action to invalidate the permit and/or proceed against the affected source owner to prevent construction.

RESPONSES TO PRELIMINARY COMMENTS

In response to preliminary informal comments (discussed above), it would be helpful to briefly clarify or highlight certain important points about the ruling. In some instances, new provisions have been added to earlier drafts in response to such comments.

1. *"Major" sources (Part II.B.).* The ruling provides that while all sources subject to SIP review requirements should be reviewed for emission limitation compliance, only "major" new sources must be subject to an ambient air quality analysis and the stringent requirements for lowest achievable emission rate, more than equivalent emission reductions, and assurance of reasonable progress toward NAAQS achievement. This is in recognition of the fact that reviewing authorities have limited resources and that smaller air pollution sources may individually have an insignificant impact on air quality. For the present, the ruling defines a "major" source as having an allowable emission rate of 100 or more tons per year (1000 for carbon monoxide).

In the notice set forth at 41 FR 55558 in today's FEDERAL REGISTER, however, EPA has tentatively proposed a definition of 50 or more tons per year (500 for carbon monoxide) to be incorporated into 40 CFR 51.18. It should thus be apparent that EPA has not finally determined that the 100-ton figure is the most

[1] Since the SIP regulations were adopted to comply with 40 CFR 51.18 and this ruling articulates what 40 CFR 51.18 requires at a minimum, EPA feels that States should generally be able to implement the ruling's requirements without regulatory SIP amendments. Where a State desires to use the maximum flexibility provided in the ruling (States retain the right to impose stricter conditions), it will be up to the State to determine whether regulatory changes and/or a State "interpretative" ruling may be needed as a matter of State law. It should be noted that EPA is publishing advance notice of proposed amendments to 40 CFR 51.18 elsewhere in today's *Federal Register* (41 FR 55558) which, when finalized, will in all probability require amendments to SIP preconstruction review regulations. States may therefore wish to defer any regulatory amendments until the EPA rulemaking process is completed.

appropriate, and States are strongly encouraged wherever resources permit to utilize a lower cut-off number. For the present, however, EPA will not legally require sources smaller than the 100-ton cut-off to undergo an air quality analysis.

2. *Lowest achievable emission rate (Part IV.A.1.)*. The ruling provides that a major new source seeking to locate in an area violating a NAAQS must meet an emission limitation which reflects the "lowest achievable emission rate" for such type of source. At a minimum, the lowest rate achieved in practice would have to be specified unless the applicant can demonstrate that it cannot achieve such a rate. In no event could the rate exceed any applicable new source performance standard (NSPS) set under section 111 of the Act.

This stringent requirement reflects EPA's judgment that a new source should be allowed to emit pollutants into an area violating a NAAQS only if its contribution to the violation is reduced to the greatest degree possible. While cost of achievement may be an important factor in determining an NSPS applicable to all areas of the country (clean as well as dirty) as a minimum, the cost factor must be accorded far less weight in determining an appropriate emission limitation for a source locating in an area violating statutorily-mandated health and welfare standards.

3. *Emission offset "Baseline" where EPA has called for a SIP revision or study (Part IV.C.4.)*. The principle behind the emission offset concept is that new sources should be allowed offset credit only for emission reductions from existing sources which would not otherwise be accomplished as a result of the Clean Air Act. Therefore, where EPA has found that a SIP is substantially inadequate to attain a NAAQS and has formally requested a SIP revision pursuant to Section 110(a)(2)(H)(ii) (or has called for a study to determine the need for such a revision), the existing SIP emission limitations could not be used as the "baseline" for determining offset credits (as would normally be the case). Emission limitations representing reasonably available control measures, which most revised SIP's should soon require, should be used instead.

4. *No construction after January 1, 1979 without SIP revision (Part IV.A.5.)*. The ruling provides that in those areas (discussed in paragraph 3 immediately above) where EPA has called for a SIP revision or study, no permit issued on or after January 1, 1979, may allow the source to commence construction until EPA has approved or promulgated a SIP revision. This condition merely recognizes the fact that the new source review requirements of 40 CFR 51.18 are carried out as an integral part of a SIP, the purpose of which is to attain the health-related NAAQS as expeditiously as practicable. Where a SIP is so inadequate that EPA has identified the need to have it revised, it is EPA's judgment that new major source growth must be deferred if the SIP revision is not accomplished in a timely manner.

The January, 1979, date is relevant since in most SIP revisions which EPA requested in July, 1976, States were given until July 1, 1978, to submit all necessary SIP revision measures. Under the framework of the Clean Air Act, EPA would then have six months either to approve the State's revision or promulgate its own revision. In some areas, EPA may have called for a study of the need for a SIP revision but has not requested a revision on a specified schedule. If EPA calls for such a revision with a submission deadline of later than July 1, 1978, the ruling provides that the January 1, 1979, date would be correspondingly extended.

It can thus be seen that this condition provides a useful link between the 40 CFR 51.18 preconstruction review procedures and the SIP revision process. Where States are delayed in their efforts to revise their SIP's, the effect will be to delay the construction of any new major polluting sources in the affected areas.

5. *More than "One-for-One" emission offsets (Part IV.A.3.)*. It should be stressed that this ruling is not a "status quo" or "one-for-one" emission offset rule for areas violating the Act's health and welfare standards. The ruling makes clear that the emission offset reductions must exceed the new source's emissions so as to represent reasonable progress toward attainment of the NAAQS.

6. *No "Banking" of emission offset credit (Part IV.C.6.)*. The ruling allows no leftover emission offset credit to be "banked" for future pollution growth once an emission offset has been executed for a particular new source. To allow such "banking" would be inconsistent with a basic policy of the Act and the ruling—namely, that at a minimum, no new source should be allowed to make existing NAAQS violations any worse.

7. *"External" emission offsets (Part V)*. Several commenting States were concerned over possible administrative and legal problems associated with "external" emission offsets (provided by sources not owned by the new source owner). There were questions as to whether (1) States could legally tighten emission limits for existing sources in order to permit the construction of a new, possibly competing, source; (2) a source could reasonably persuade a competing source to further control its emission in order to permit the new source to be built; and (3) States would be required to develop a new regulation for each emission offset situation.

In response to these concerns, it should be noted that a State is not required to investigate emission offset possibilities as a result of each request to construct a new source. States may leave such arrangements to the proposed new source. It should be noted that in many cases the additional emission reduction can be obtained by improvements in a facility already owned by the developer of the new source. This would be particularly true in cases where the new emissions would come from expansion of an existing source. Where such intracompany emission offsets are not possible, the new source may be required to look elsewhere.

The State need not revise its regulations for each emission offset situation, but may use any available mechanism to obtain the necessary legally binding commitment (enforceable by EPA and private parties under the Clean Air Act) from the source providing the emission offsets. Finally, it should be noted that the ruling generally reflects the maximum flexibility permitted under the Clean Air Act, and the allowance for external emission offsets is an example of the flexibility that EPA has sought to provide. Although some States may find the provision for external emission offsets unworkable for various reasons, such flexibility should be available to those States that wish to use it.

8. *Sources in "Clean" areas which could impact on areas exceeding a NAAQS.* Several States requested specific quantification as to the incremental level of pollution that would be considered an exacerbation of an existing violation of a national standard. This question is only applicable when a major source is to be located in a "clean" area, but might impact an area that exceeds a NAAQS some distance away (i.e., a major source locating in the middle of an area that exceeds standards clearly will exacerbate the existing violations).

Over the next several months, EPA intends to develop regulatory guidance for standardizing the modeling procedures to be used in evaluating control strategies and in conducting new source reviews (with respect to both the NAAQS and regulations for preventing significant deterioration of air quality (see 40 CFR 52.21)). As part of this guidance, the issue of the "significance" of a source's air quality impact will be addressed. Until such guidance is available, reviewing agencies must make a reasonable cutoff on the geographic extent of the air quality calculations, based on a case-by-case analysis of such factors as the size of the source, the validity of the air quality predictions at long distances, and other relevant factors.

9. *"Fugitive Dust" problems.* Several States have expressed concern over the potential disapprovals of particulate matter sources planning to locate in rural areas that violate a particulate NAAQS due primarily to natural fugitive dust. The Agency has set forth a tentative proposal on this issue in the advance notice of proposed rulemaking appearing in today's FEDERAL REGISTER at 41 FR 55558, The intent at this time is to focus on urban areas and other areas that exceed the national standards for particulate matter as a result of man's activities. For the present, a State should consult the appropriate EPA Regional Office for guidance if the State is considering whether and to what extent the terms of the ruling should apply to particulate sources seeking to locate in rural areas. Where emission offsets are necessary, the Administrator finds no reason for not allowing credit from controlling existing fugitive emission sources, as long as all

other requirements set forth in the ruling are met.

It should be noted that especially for particulate matter, the geographical representativeness of a given monitor is often somewhat limited; that is, just because a monitor records high concentrations, it is not necessary to assume that such concentrations occur over a wide geographical area. Where a monitor is not located close to the proposed new source, it may be more appropriate (provided accurate emission inventories are available) to estimate existing air quality using a model than to use data from a remote monitoring location.

10. *Geographic applicability of ruling for hydrocarbon sources.* Because widespread violations of the NAAQS for photochemical oxidants have been found even in remote rural areas, some commentors have assumed that hydrocarbon control programs (including emission offset requirements) are necessary in all areas where there are violations of the photochemical oxidant standard. Based on the data available at this time, EPA believes that the rural oxidant problem is largely due to transport of oxidant or its precursors from major urban areas. Consequently a distinction can reasonably be made for control purposes between the extensive areas where an oxidant problem exists and the areas where much of the problem is created. As described in more detail in the notice appearing in today's FEDERAL REGISTER at 41 FR 55558, investigations are underway to determine the areas where hydrocarbon control programs will be most effective in reducing the highest oxidant concentrations. It is expected that the resulting guidance will focus on major metropolitan areas (larger than 200,000 population) extending as much as 85 miles from the largest urban centers. For the present, all of the provisions of the ruling must be applied to hydrocarbon sources seeking to locate within such areas that violate the oxidant NAAQS. The appropriate EPA Regional Office should be consulted if additional guidance is needed.

11. *No accommodation of new sources merely because primary NAAQS will eventually be achieved.* Some commenting States have argued that the Clean Air Act does not authorize EPA to adopt the stringent conditions of this ruling. The argument appears to be that even if a State has not achieved a primary NAAQS by the Congressionally-mandated deadline, the State may permit major new pollution sources to worsen present air quality so long as NAAQS achievement is projected for some time in the future.

EPA finds this argument totally untenable in light of the words of the Act, its legislative history, and Court decisions. The Act demands that each primary (health-related) NAAQS be achieved "as expeditiously as practicable," but in no event (if all extensions are allowed) later than mid-1977.

The Courts have continually emphasized that the Act demands primary NAAQS achievement by a date certain. EPA simply cannot interpret the Act to allow a major new source to make an existing primary NAAQS violation worse after the Congressional date certain has passed, and therefore even further delay the overdue NAAQS achievement. The only plausible interpretation of the Act other than that reflected in the ruling is that no new sources should be allowed in a violating area.

It should be noted that the Act is more flexible with regard to the secondary (welfare-related) NAAQS's. This point is dealt with in Part VI of the ruling.

12. *No accommodation of new sources based on cost-balancing approach.* Some have argued that a new source should be allowed to worsen existing NAAQS violations if a "cost-benefit" analysis indicates that the economic costs of necessary emission controls or offsets are excessive in relation to the resulting air quality benefits. For much the same reason discussed in section 11 immediately above, the Clean Air Act simply does not allow such an approach. Application of such a policy could allow further delay in achieving already-overdue standards.

Particularly with regard to the primary NAAQS's, Congress and the Courts have made clear that economic considerations must be subordinated to NAAQS achievement and maintenance. While the ruling allows for some growth in areas violating a NAAQS if the net effect is to insure further progress toward NAAQS achievement, the Act does not allow economic growth to be accommodated at the expense of the public health.

While EPA cannot allow cost considerations to override public health concerns, EPA is sensitive to the cost impacts of the Clean Air Act. EPA plans to assess the economic impact of the ruling as it is implemented to determine whether adjustments can be made consistent with the law, and/or whether legislative amendments would be prudent.

Again, the Act is more flexible with regard to the secondary NAAQS's. A cost-benefit analysis may convince a state of the need to defer its SIP attainment date for the secondary NAAQS's. (See part VI of the ruling.)

RELATIONSHIP TO OTHER PRECONSTRUCTION REVIEWS AND SIP REQUIREMENTS

Preconstruction review is also being implemented under EPA's regulations for preventing significant deterioration of air quality (40 CFR 52.21) and the national emission standards for hazardous air pollutants (40 CFR Part 61). In addition, voluntary reviews are being conducted for new sources subject to EPA's new source performance standards (40 CFR Part 60). In cases where States have been delegated the responsibility to implement these various programs, the reviews are being implemented at the State level. Where States have not accepted delegation, EPA retains the new source review responsibility. Certain types of sources may be subject to more than one of these regulations, and where the program responsibility rests with a single agency, the preconstruction reviews are normally carried out simultaneously. Even though a source may undergo simultaneous review under several of the above mentioned regulations, the provisions of this ruling are applicable only to the review required under 40 CFR 51.18. Thus a source may meet the requirements of the ruling, yet be disapproved because it does not meet the requirements of one of the other applicable regulations.

The ruling is not intended to replace the requirement for a SIP control strategy to attain and maintain standards. An individual emission offset must always result in reasonable progress toward attainment, but does not need to demonstrate that the NAAQS will be attained.

Since SIP control strategies must account for anticipated source growth, some questions may arise as to how new sources that are allowed to construct under the ruling should be dealt with in the revised SIP control strategies that EPA has recently requested. The projection and allocation of new sources and emissions should be carried out in the normal manner (see EPA's Air Quality Maintenance Guidelines, Vols. 7 and 13), although additional information on the size distribution of the new sources may be necessary. Where it is clear that a certain portion of the new sources and emissions will be subject to the terms of the ruling, the SIP control strategy does not need to account for such emissions (since the emission offset requirements will ensure that such sources will not increase emissions in the area).

PUBLIC COMMENTS

EPA strongly encourages all interested parties and the general public to comment on both the general policies and the detailed provisions of the ruling appearing below. EPA may make adjustments to the ruling as warranted by the public comment. Written comments should be submitted (preferably in triplicate) no later than February 15, 1977, to: Environmental Protection Agency, Control Programs Development Division (MD-15), Research Triangle Park, N.C. 27711.

EPA plans to conduct informal public hearings on this ruling in several cities throughout the country in the next few weeks. Notice of the time, place, and format of such hearings will appear shortly in the FEDERAL REGISTER.

Finally, it is important to note that a notice appears in today's FEDERAL REGISTER at 41 FR 55558 which sets forth EPA's advance notice of certain proposed changes to 40 CFR 51.18. The issues discussed there bear upon some of the issues addressed in this ruling, and persons commenting on both notices are urged to prepare a single set of comments.

Dated: December 15, 1976.

RUSSELL E. TRAIN,
Administrator.

INTERPRETATIVE RULING FOR IMPLEMENTATION OF THE REQUIREMENTS OF 40 CFR 51.18

I. INTRODUCTION

This notice sets forth EPA's Interpretative Ruling on the preconstruction review requirements for stationary sources of air pollution under 40 CFR 51.18. This ruling reflects EPA's judgment that the Clean Air Act allows a major new or modified source[1] to locate in an area that exceeds a national ambient air quality standard (NAAQS) only if stringent conditions can be met. These conditions are designed to insure that the new source's emissions will be controlled to the greatest degree possible; that more than equivalent offsetting emission reductions ("emission offsets") will be obtained from existing sources; and that these will be progress toward achievement of the NAAQS.

II. INITIAL ANALYSIS AND APPLICABLE REQUIREMENTS

A. *Review of all sources for emission limitation compliance.* The reviewing authority must examine each proposed new source subject to the SIP preconstruction review requirements approved or promulgated pursuant to 40 CFR 51.18 to determine if such a source will meet all applicable emission requirements in the SIP. If the reviewing authority determines that the proposed new source cannot meet the applicable emission requirements, the permit to construct must be denied.

B. Review of major sources for air quality impact. In addition, for each proposed "major" new source or "major" modification, the reviewing authority must perform an air quality analysis[2] to determine if the source will cause or exacerbate a violation of a NAAQS. A proposed source which would not be a "major" source may be approved without further analysis, provided such a source meets the requirement of Part II.A.

The term "major source" shall, as a minimum, cover any structure, building, facility, installation or operation (or combination thereof) for which the allowable emission rate is equal to or greater than the following:

	tons per year
Particulate matter	100
Sulfur oxides	100
Nitrogen oxides	100
Non-methane hydrocarbons (organics)	100
Carbon monoxide	1,000

Similarly a "major modification" shall include a modification to any structure, building, facility, installation or operation (or combination thereof) which increases the allowable emission rate by the amounts set forth above. A proposed new source with an allowable emission rate exceeding the above amounts is considered a major source under this ruling, even though such a source may replace an existing source with the result that the net additional emissions are increased by less than the above amounts.

Where a source is constructed or modified in increments which individually do not meet the above criteria, and which are not a part of a program of construction or modification in planned incremental phases previously approved by the reviewing authority, all such increments commenced after the date this ruling appears in the FEDERAL REGISTER or after the latest approval issued by the reviewing authority, whichever is most recent, shall be added together for determining applicability under this ruling. Moreover, where there is a group of proposed sources which individually do not meet the above criteria, but which would be constructed in substitution for a major source, the group should be collectively reviewed as a major source.

Allowable annual emissions shall be based on the applicable New Source Performance Standard (NSPS) set forth in 40 CFR Part 60 or the applicable SIP emission limitation, whichever is less, and the maximum annual rated capacity of the source. If the source is not subject to either a NSPS or SIP emission limitation, annual emissions shall be based on (1) the maximum annual rated capacity, and (2) the emission rate agreed to by the source as a permit condition.

The following shall not, by themselves, be considered modifications under this ruling:

(1) Maintenance, repair, and replacement which the reviewing authority determines to be routine for a source category;

(2) An increase in the hours of operation, unless limited by previous permit conditions;

(3) Use of an alternative fuel or raw material (unless limited by previous permit conditions), if prior to the publication of this ruling in the FEDERAL REGISTER, the source is designed to accommodate such alternative use; or

(4) Change in ownership of a source.

C. Air quality impact analysis. For "stable" air pollutants (i.e., SO_2, particulate matter and CO), the determination of whether a source will cause or exacerbate a violation of a NAAQS generally should be made on a case-by-case basis as of the proposed new source's operation date using the best information and analytical techniques available (i.e., atmospheric simulation modeling, unless a source will clearly impact on a receptor which exceeds a NAAQS). This determination should be independent of any general determination of nonattainment or judgment that the SIP is substantially inadequate to attain or maintain the NAAQS. This is because the area affected by a determination of SIP inadequacy usually conforms to established administrative boundaries such as Air Quality Control Regions (AQCR's) rather than a precisely-defined area where air quality problems exist. For example, a SIP revision may be required for an AQCR on the basis of a localized violation of standards in a small portion of the AQCR. If a source seeks to locate in the "clean" portion of the AQCR and would not affect the area presently exceeding standards or cause a new violation of the NAAQS, such a source may be approved. For major sources of nitrogen opides, the initial determination of whether a source would cause or exacerbate a violation of the NAAQS for NO_2 should be made using an atmospheric simulation model assuming all the nitrogen oxide emitted is oxidized to NO_2 by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate. For major sources of hydrocarbons, see the discussion entitled "Geographic Applicability of Emission Offset Requirements for Hydrocarbon Sources" in the Notice appearing in today's FEDERAL REGISTER at 41 FR 55558.

III. SOURCES LOCATING IN "CLEAN" AREAS, BUT WOULD CAUSE A NEW VIOLATION OF A NAAQS

If the reviewing authority finds that the allowable emissions[3] from a proposed major source would cause a new violation of a NAAQS, but would not exacerbate an existing violation, approval may be granted only if both of the following conditions are met:

Condition 1. The new source is required to meet a more stringent emission limitation[4] and/or the control of existing sources below allowable levels is required so that the source will not cause a violation of any NAAQS.

Condition 2. The new emission limitations for the new source as well as any existing sources affected must be enforceable in accordance with the mechanisms set forth in Part V below.

IV. SOURCES THAT WOULD EXACERBATE AN EXISTING VIOLATION OF A NAAQS

A. *Conditions for approval.* If the reviewing authority finds that the allowable emissions[3] from a proposed source would exacerbate an "existing" violation (i.e., as of the source's proposed start-up date) of a NAAQS, approval may be granted only if all the following conditions are met:

Condition 1. The new source is required to meet an emission limitation which specifies the lowest achievable emission rate for such type of source.[3] In determining the applicable emission limitation, the reviewing authority must consider the most stringent emission limitation in any SIP and the lowest emission rate which is achieved in practice for such type of source. At a minimum, the lowest emission rate achieved in practice must be specified unless the applicant can sustain the burden of demonstrating that it cannot achieve such a rate. In no event could the specified rate exceed any applicable NSPS. Even where the applicant demonstrates that it cannot achieve the lowest

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[1] Hereafter the term "new source" will be used to denote both new and modified sources.

[2] Required only for those pollutants causing the proposed source to be defined as a "major" source, although the reviewing authority may address other pollutants if deemed appropriate.

[3] Where a new source will result in specific and well defined indirect or secondary emissions which can be accurately quantified, the reviewing authority should consider such secondary emissions in determining whether the source would cause or exacerbate a violation of the NAAQS. However, since EPA's authority to perform indirect source review relating to parking-type facilities has been restricted by statute, consideration of parking-type indirect impacts is not required.

[4] If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the authority may instead prescribe a design, operational or equipment standard. In such cases, the reviewing authority shall make its best estimate as to the emission rate that will be achieved and must specify that rate in the required submission to EPA (see Part V). Any permits issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained (or that the operational conditions will be properly performed) so as to continuously achieve the assumed degree of control. Such conditions shall be enforceable as emission limitations by private parties under Section 304. Hereafter, the term "emission limitations" shall also include such design, operational, or equipment standards.

emission rate achieved in practice, this in itself would not operate to raise the required emission limitation to the applicable NSPS. The "lowest achievable emission rate" requirement must still apply, and the applicant would retain the burden of demonstrating that it cannot achieve any rate more stringent than the NSPS rate.

Condition 2. The applicant must certify that all existing sources owned or controlled by the owner or operator of the proposed source in the same AQCR as the proposed source are in compliance with all applicable SIP requirements or are in compliance with an approved schedule and timetable for compliance under a SIP or an enforcement order issued under Section 113. The reviewing authority must examine all enforcement orders for sources owned or operated by the applicant in the AQCR to determine if more expeditious compliance is practicable. Where practicable, a more expeditious compliance schedule for such sources must be required as an enforceable condition of the new source permit.

Condition 3. Emission reductions ("offsets") from existing sources in the area of the proposed source (whether or not under the same ownership) are required such that the total emissions from the existing and proposed sources are sufficiently less than the total allowable emissions from the existing sources under the SIP [5] prior to the request to construct or modify so as to represent reasonable progress toward attainment of the applicable NAAQS.[3] Only intrapollutant emission offsets will be acceptable (e.g., hydrocarbon increases may not be offset against SO_2 reductions).

Condition 4. The emission offsets will provide a positive net air quality benefit in the affected area (see Part IV.D. below).[3]

Condition 5. For a source which would be located in an area where EPA has found that a SIP is substantially inadequate to attain a NAAQS and has formally requested a SIP revision pursuant to Section 110(a)(2)(H)(ii) (or an area where EPA has called for a study to determine the need for such a revision), permits granted on or after January 1, 1979 [6] must specify that the source may not commence construction until EPA has approved or promulgated a SIP revision for the area (if the source is a major source of the pollutant subject to the call for revision or study).

B. *Exemptions from certain conditions.* The reviewing authority may exempt a source from Condition 1 under Part III or Conditions 3 and 4 under Part IV.A., in cases where the source must switch fuels due to lack of adequate fuel supplies or where the source is required as a result of EPA regulations (i.e., lead-in-fuel requirements) to install additional process equipment and no exception from such an EPA regulation is available to the source. Such an exemption may be granted only if: (i) the applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Condition 1 under Part III or Conditions 3 and 4 under Part IV.A. and that such efforts were unsuccessful; (ii) the applicant has secured all available emission offsets; and (iii) the applicant will continue to seek the necessary emission offsets and apply them when they become available. Such an exemption may result in the need to revise the SIP to provide additional control of existing sources.

C. *Baseline for determining credit for emission offsets.* Except as provided below, the baseline for determining credit for emission and air quality offsets will be the SIP emission limitations in effect at the time the application to construct or modify a source is filed. Thus, credit for emission offset purposes may be allowable for existing control that goes beyond that required by the SIP.

1. *No applicable SIP requirement.* Where the applicable SIP does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions at the time the permit request is filed (determined by source test or other appropriate means).

2. *Combustion of fuels.* Generally, the emissions for determining emission offset credit involving an existing fuel combustion source will be the allowable emissions under the SIP for the type of fuel being burned at the time the new source application is filed (i.e., if the existing source has switched to a different type of fuel at some earlier date, any resulting emission reduction [either actual or allowable] shall not be used for emission offset credit). If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit, based on the allowable emissions for the fuels involved, is acceptable; provided, that the permit must be conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The reviewing authority should ensure that adequate long-term supplies of the new fuel are available before granting emission offset credit for fuel switches.

Where the particulate emission limit for fuel combustion exceeds the appropriate uncontrolled emission factor in "Compilation of Air Pollutant Emission Factors" (AP-42) (as when a State has a single emission limit for all fuels), emission offset credit will only be allowed for control below the appropriate uncontrolled emission factor in AP-42. (Actual emissions determined by a source test may be used in place of the uncontrolled emission factor in AP-42 in the above situation.)

3. *Operating hours and source shutdown.* Emission offsets generally should be made on a pounds-per-hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected production rate. The reviewing agency should specify other averaging periods (e.g., tons per year) in addition to the pounds-per-hour basis if necessary to carry out the intent of this ruling. A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below that which existed at the time the new source application was submitted; provided, that the work force to be affected has been notified of the proposed shutdown or curtailment. Emission offsets that involve reducing operating hours or production or source shutdowns must be legally enforceable, as is the case for all emission offset situations.[7] Nothing contained in this ruling is intended to alter EPA's interpretation of the Clean Air Act with regard to the use of "supplemental control systems" or "stack height increases" as set forth at 41 FR 7450 (February 18, 1976).

4. *EPA has requested a SIP revision (or study).* Where EPA has found that a SIP is substantially inadequate to attain a NAAQS and has formally requested a SIP revision pursuant to Section 110(a)(2)(H)(ii) (or EPA has called for a study to determine the need for such a revision) the baseline for emission offset credit involving sources of the relevant pollutant will be the emissions resulting from the application of reasonably available control measures. The intent of this requirement is to prevent sources from receiving emission offset credit against an inadequate SIP and nullifying the gains that will be achieved through the required SIP revision. In effect, States should use the anticipated SIP revision as the baseline for emission offset credit until such time as the SIP is formally revised.

5. *Credit for hydrocarbon substitution.* EPA has found that almost all non-methane hydrocarbons are photochemically reactive and that low reactivity hydrocarbons eventually form as much photochemical oxidant as the highly-reactive hydrocarbons. Therefore, no emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity.

6. *No "banking" of emission offset credit.* Once an emission offset has been executed for a particular new source, there can be no leftover credit to "bank" for additional new source growth in the future. This "no banking" rule would not prohibit, however, the issuance of a single permit to cover more than one phase of a phased-construction project.[8] Similarly, for State-initiated emission offsets (see Part V.B.), several different sources may be allowed to construct as part of a general SIP revision, so long as the plans for each source are definite and such sources are specifically identified as the recipient of the emission offset credits in the SIP revision.

D. *Geographic area of concern.* In the case of emission offsets involving hydrocarbons or NO_x, the offsets may be obtained from sources located anywhere in the broad vicinity of the proposed new source (within the area of nonattainment, and usually within the same air quality control region). This is because area-wide oxidant and NO_2 levels are generally not as dependent on specific hydrocarbon or NO_x source location as they are on overall area emissions. However, since the air quality impact of SO_2, particulate and carbon monoxide sources is site dependent, simple area-wide mass emission offsets are not appropriate. For these pollutants, the reviewing authority should require atmospheric simulation modeling to ensure that the emission offsets provide a positive net air quality benefit. However, to avoid unnecessary consumption of limited, costly and time consuming modeling resources, in most cases it can be assumed that if the emission offsets are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from substantially the same effective stack height, the air quality test under Condition 4 in Part IV.A. above will be met. Thus, when stack emissions are offset against a ground level source at the same site, modeling would be required.

E. *Reasonable progress towards attainment.* As long as the emission offset is greater than one-for-one, and the other criteria set

[5] Subject to the provisions of Part IV.C. below.

[6] Or, if later, the date which is six months after the deadline for submittal of the revision.

[7] Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emission offset credit. However, where an applicant can establish that it shut down or curtailed production after SIP approval as a result of enforcement action providing for a new source as a replacement for the shut down or curtailment, credit for such shut down or curtailment may be applied to offset emissions from the new source.

[8] If any phase covered by the permit is for any reason not constructed, there would be no resulting credit to "bank."

forth above are met, EPA does not intend to question a reviewing authority's judgment as to what constitutes reasonable progress towards attainment as required under Condition 3 in Part IV.A. above. Reviewing authorities should bear in mind, however, that the control achieved through emission offsets can significantly assist the authorities in developing legally acceptable SIP's.

V. ADMINISTRATIVE PROCEDURES

The necessary emission offsets may be proposed either by the owner of the proposed source or by the local community or the State. The emission reduction committed to must be enforceable by authorized State and/or local agencies and under the Clean Air Act, and must be accomplished by the new source's start-up date.

A. *Source initiated emission offsets.* A source may propose emission offsets which involve (1) reductions from sources controlled by the source owner (internal emission offsets); and/or (2) reductions from neighboring sources (external emission offsets). The source does not have to investigate all possible emission offsets. As long as the emission offsets obtained represent reasonable progress toward attainment, they will be acceptable. It is the reviewing authority's responsibility to assure that the emission offsets will be as effective as proposed by the source. An internal emission offset will be considered enforceable if it is made a SIP requirement by inclusion as a condition of the new source permit and the permit is forwarded to the appropriate EPA Regional Office.[9] An external emission offset will not be accepted unless the affected source(s) is subject to a new SIP requirement to ensure that its emissions will be reduced by a specified amount in a specified time. Thus, if the source(s) does not obtain the necessary reduction, it will be in violation of a SIP requirement and subject to enforcement action by EPA, the State and/or private parties. The form of the SIP revision may be a State or local regulation, operating permit condition, consent or enforcement order, or any other legally enforceable mechanism available to the State. If a SIP revision is required, the public hearing on the revision may be substituted for the normal public comment procedure required for all major sources under 40 CFR 51.18. The formal publication of the SIP revision approval in the FEDERAL REGISTER need not appear before the source may proceed with construction. To minimize uncertainty that may be caused by these procedures, EPA will, if requested by the State, propose a SIP revision for public comment in the FEDERAL REGISTER concurrently with the State public hearing process. Of course, any major change in the final permit/SIP revision submitted by the State may require a reproposal by EPA.

B. *State or community initiated emission offsets.* A State or community which desires that a source locate in its area may commit to reducing emissions from existing sources to sufficiently outweigh the impact of the new source and thus open the way for the new source. As with source-initiated emission offsets, the commitment must be something more than one-for-one. This commitment must be submitted as a SIP revision by the State.

The provisions of Part IV.C.4. above remain applicable to State or community initiated emission offsets. Therefore, where EPA has found that a SIP is substantially inadequate to attain an NAAQS and has formally requested a SIP revision pursuant to Section 110(a)(2)(H)(ii) (or has called for a study to determine the need for such a revision), the resulting emission reduction may not be used as an emission offset.

VI. POLICY WITH RESPECT TO SECONDARY STANDARDS

The statutory attainment dates for the primary NAAQS have now passed or will pass very soon and cannot be administratively extended. Therefore, this ruling does not allow a new source to cause or exacerbate a primary NAAQS violation on the grounds that the SIP will eventually achieve the NAAQS (as may have been permitted in some cases before the statutory attainment dates).

The Act provides more flexibility with respect to secondary NAAQS's. Rather than setting specific deadlines, Section 110 requires secondary NAAQS's to be achieved within a "reasonable time." Under 40 CFR 51.13(b), a State may revise its SIP to provide extensions from its present secondary NAAQS deadlines. If, therefore, a State submits (and EPA approves) such a revision, a new source which would cause or exacerbate a secondary NAAQS violation may be exempt from the Conditions of Part IV.A. so long as the new source meets the applicable SIP emission limitations and will not interfere with attainment by the newly-specified date.

[FR Doc.76-37346 Filed 12-20-76;8:45 am]

[FRL 656-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Alabama: Approval of Plan Revision

On October 7, 1976 (41 FR 44194), the Agency announced as a proposed rulemaking, an implementation plan change which the State of Alabama had adopted and submitted for EPA's approval. Copies of the materials submitted by Alabama were made available for public inspection and written comments on the proposed revision were solicited. The purpose of the present notice is to announce the Administrator's approval of this revision. An evaluation of them may be obtained by consulting the personnel of the Agency's Region IV Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30308, or telephone 404/881-3286.

On August 20, 1975, the Administrator revised 40 CFR Part 51 by changing the emergency level for photochemical oxidants from 1200 $\mu g/m^3$ to 1000 $\mu g/m^3$, one-hour average. The Alabama Air Pollution Control Commission, on March 30, 1976, amended its regulation to reflect this change. The amendment was submitted for EPA's approval on April 23, 1976.

This revised emergency level for photochemical oxidants is hereby approved. These actions are effective immediately since they serve only to notify implementation plan changes already in effect under Alabama law and impose no additional burden to anyone.

Copies of the information submitted by the State are available for public inspection during normal business hours at the following locations:

Air Programs Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308.
Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Alabama 36104.
Public Information Reference Unit, Library Systems Branch PM-213, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

(Section 110(a), Clean Air Act (42 U.S.C. 1857c-5(a)))

Dated: December 14, 1976.

JOHN QUARLES,
Acting Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart B—Alabama

Section 52.50 is amended by adding paragraph (c)(15) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(15) Revised emergency level for photochemical oxidants (emergency episode control plan) submitted by the Alabama Air Pollution Control Commission on April 23, 1976.

[FR Doc.76-37347 Filed 12-20-76;8:45 am]

[FRL 657-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to the Virgin Islands Implementation Plan

This notice announces approval by the Environmental Protection Agency (EPA) of a revision to the Virgin Islands Implementation Plan.

As requested by the Virgin Islands on August 16, 1976, the EPA has reconsidered its disapproval of the revised 12 V.I.R. & R. 9:204-26, "Sulfur Compounds Emission Control," subsections (a)(1), (a)(3), (b), (c) and (d) as they apply to the island of St. Croix. Receipt of this request was announced in the October 1, 1976 FEDERAL REGISTER at 41 FR 43421 which contains a full description of the proposed revision.

In the October 1, 1976 notice, EPA established a 30-day period for receipt of comments from the public on whether or not the proposed revision to the Virgin Islands Implementation Plan shhould be approved. No comments were received.

EPA has determined that approval of this proposed revision to the Virgin Islands Implementation Plan would not result in the contravention of any applicable ambient air quality standard. The proposed revision has been found to be consistent with current EPA policies and goals set forth by the requirements of section 110(a)(2)(A)-(H) of the Clean Air Act and EPA regulations in 40 CFR Part 51 and, therefore, is approved.

[9] The emission offset will therefore be enforceable by EPA under Section 113 as an applicable SIP requirement and will be enforceable by private parties under Section 304 as an emission limitations. EPA will publish notice of such emission offsets in the FEDERAL REGISTER.

Effective date: This revision to the Virgin Islands Implementation Plan becomes effective January 21, 1977.

(Secs. 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 1857c-5, 1857g))

JOHN QUARLES,
Acting Administrator,
Environmental Protection Agency.

Dated: December 14, 1976.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart CCC—Virgin Islands

1. Section 52.2770 is amended by adding new paragraph (c) (8) as follows:

§ 52.277 Identification of plan.

* * * * *

(c) Supplemental information was submitted on: * * *

(8) As it applies to the island of St. Croix, per an August 16, 1976 request from the Virgin Islands, revised 12 V.I.R. & R. 9:204-26 (Sulfur Compounds Emission Control) excluding subsection (a) (2), as submitted on January 21, 1976 by the Governor of the Virgin Islands.

2. In § 52.2780, paragraph (b) is revised and paragraph (c) is added as follows:

§ 52.2780 Control strategy for sulfur oxides.

* * * * *

(b) 12 V.I.R. & R. 9:204-26, as submitted to EPA on January 21, 1976 and as amended and resubmitted to EPA on June 3, 1976, is approved as it applies to the islands of St. Thomas and St. John. Subsection (a) (2) of the said regulation is not approved as it applies to the island of St. Croix because of the inadequacy of the control strategy demonstration noted in paragraph (a) of this section. The remaining subsections of the regulation are approved as they apply to the island of St. Croix. Consequently, all sources on St. Croix are required to conform to the sulfur-in-fuel limitations contained in 12 V.I.R. & R. 9:204-26 as originally submitted to EPA on January 31, 1972 and approved by EPA on May 31, 1972.

(c) Reference to "Section (a) (2)" in subsection (d) of 12 V.I.R. & R. 9:204-26, as submitted to EPA on January 21, 1976 and as amended and resubmitted to EPA on June 3, 1976, refers to the following approved limitations: (1) For the islands of St. Thomas and St. John, subsection (a) (2) of section 204-26 as submitted to EPA on January 21, 1976 and as amended and resubmitted to EPA on June 3, 1976; (2) for the island of St. Croix, subsection (a) (2) of section 204-26 as originally submitted to EPA on January 31, 1972 and approved by EPA on May 31, 1972.

[FR Doc.76-37348 Filed 12-20-76;8:45 am]

[FRL 661-6]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Delegation of Authority to the State of Ohio

Pursuant to the delegation of authority to implement the standards of performance for new stationary sources (NSPS) to the State of Ohio on August 4, 1976, EPA is today amending 40 CFR 60.4, Address to reflect this delegation. A Notice announcing this delegation is published in the Notices section of this issue of the FEDERAL REGISTER (FR Doc. 76-37487). The amended § 60.4 is set forth below which adds the addresses of the Agencies in Ohio which assist the State in the delegated authority to that list of addresses to which all reports, requests, applications, submittals, and communications to the Administrator pursuant to this part must be sent.

The Administrator finds good cause for foregoing prior notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. The delegation which is reflected by this administrative amendment was effective on August 4, 1976, and it serves no purpose to delay the technical change of this addition of the addresses to the Code of Federal Regulations.

This rulemaking is effective immediately, and is issued under the authority of section 111 of the Clean Air Act, as amended.

(42 U.S.C. 1857c-6.)

Dated: December 10, 1976.

GEORGE R. ALEXANDER, Jr.,
Regional Administrator.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 60.4, paragraph (b) is amended by revising subparagraph KK, to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(A)-(JJ) * * *

(KK) Ohio—

Medina, Summit and Portage Counties; Director, Air Pollution Control, 177 South Broadway, Akron, Ohio, 44308.

Stark County; Director, Air Pollution Control Division, Canton City Health Department, City Hall, 218 Cleveland Avenue SW, Canton, Ohio, 44702.

Butler, Clermont, Hamilton and Warren Counties; Superintendent, Division of Air Pollution Control, 2400 Beekman Street, Cincinnati, Ohio, 45214.

Cuyahoga County; Commissioner, Division of Air Pollution Control, Department of Public Health and Welfare, 2735 Broadway Avenue, Cleveland, Ohio, 44115.

Lorain County; Control Officer, Division of Air Pollution Control, 200 West Erie Avenue, 7th Floor, Lorain, Ohio, 44052.

Belmont, Carroll, Columbiana, Harrison, Jefferson, and Monroe Counties; Director, North Ohio Valley Air Authority (NOVAA), 814 Adams Street, Steubenville, Ohio, 43952.

Clark, Darke, Greene, Miami, Montgomery, and Preble Counties; Supervisor, Regional Air Pollution Control Agency (RAPCA), Montgomery County Health Department, 451 West Third Street, Dayton, Ohio, 45402.

Lucas County and the City of Rossford (in Wood County); Director, Toledo Pollution Control Agency, 26 Main Street, Toledo, Ohio, 43605.

Adams, Brown, Lawrence, and Scioto Counties; Engineer-Director, Air Division, Portsmouth City Health Department, 740 Second Street, Portsmouth, Ohio, 45662.

Allen, Ashland, Auglaize, Crawford, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Knox, Marion, Mercer, Morrow, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van Wert, Williams, Wood (except City of Rossford), and Wyandot Counties; Ohio Environmental Protection Agency, Northwest District Office, 111 West Washington Street, Bowling Green, Ohio, 43402.

Ashtabula, Geauga, Lake, Mahoning, Trumbull, and Wayne Counties; Ohio Environmental Protection Agency, Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio, 44087.

Athens, Coshocton, Gallia, Guernsey, Highland, Hocking, Holmes, Jackson, Meigs, Morgan, Muskingum, Noble, Perry, Pike, Ross, Tuscarawas, Vinton, and Washington Counties; Ohio Environmental Protection Agency, Southeast District Office, Route 3, Box 603, Logan, Ohio, 43138.

Champaign, Clinton, Logan, and Shelby Counties; Ohio Environmental Protection Agency, Southwest District Office, 7 East Fourth Street, Dayton, Ohio, 45402.

Delaware, Fairfield, Fayette, Franklin, Licking, Madison, Pickaway, and Union Counties; Ohio Environmental Protection Agency, Central District Office, 369 East Broad Street, Columbus, Ohio, 43215.

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[FR Doc.76-37488 Filed 12-20-76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 76-1062]

PART 1—PRACTICE AND PROCEDURE
PART 73—RADIO BROADCAST SERVICES

Regulation of Radio and Television Broadcasting

Correction

In FR Doc. 76-35673 appearing on page 53022 in the issue for Friday, December 3, 1976, in the third column of page 53025 after the 6th line of § 1.544 (a), the following line was omitted: "monitor point field strength measurements and antenna proof of perform-".

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 26—PUBLIC ENTRY AND USE
PART 33—SPORT FISHING

The following special regulations are issued and are effective on January 1, 1977.

§ 26.34 Special regulations; public access, use, and recreation; for individual wildlife refuge areas.

OKLAHOMA

WICHITA MOUNTAINS WILDLIFE REFUGE

The Wichita Mountains Wildlife Refuge, Oklahoma, is open to public access, use, and recreational activity from January 1 through December 31, 1977, inclusive, subject to the provisions of Title 50, Code of Federal Regulations,