Source of flooding	Location	Elevation in feet, national geodetic vertical datum
San Felipe Creek...	Downstream Corporate Limits.	922
	Confluence of Calaveras Creek.	924
	Unnamed Dam 3, 960 feet downstream of Academy Street (Upstream).	928
	Academy Street (Upstream).	936
	Canal Street (Upstream)	939
	Tani Street (Upstream)..	947
	Unnamed Dam 264 feet upstream of Tani Street (Upstream).	948
	Gilis Avenue (Upstream).	951
	Margarite Avenue, U.S. Route 277 (Upstream).	959
	Southern Pacific Railroad (Upstream).	964
	U.S. Route 90 (Upstream).	965
Calaveras Creek	Confluence with San Felipe Creek.	924
	Corporate Limits 396 feet downstream of Brodbent Avenue.	932
	Corporate Limits 5,280 feet downstream of Southern Pacific Railroad.	965
	Southern Pacific Railroad (Upstream).	998
	Downstream U.S. Route 90 (Upstream).	998
	Upstream U.S. Route 90 (Upstream).	1,007
	Upstream Corporate Limits.	1,011
Stream 1	Downstream Corporate Limits.	937
	Bowie Street (Upstream).	946
	Plaza Avenue (Upstream).	951
	San Felipe Avenue (Upstream).	954
	U.S. Route 277, Margarite Avenue (Upstream).	958
	Vitela Street (Upstream).	963
Stream 2	Downstream Corporate Limits.	977
	Lenora Avenue (Upstream).	983
	Wildcat Drive (Upstream).	1,005
Cantu Branch.....	Downstream Corporate Limits.	1,005
	Alta Vista Road (Upstream).	1,017
	margaret Lane (Upstream).	1,025
	Terry Street (Upstream)	1,027
	Gayle Avenue (Upstream).	1,030
	U.S. Routes 277 and 90 (Upstream).	1,034
	Corporate Limits 6,970 feet upstream of U.S. Routes 277 and 90.	1,042
	Upstream Corporate Limits.	1,046
Stream 3	Downstream Corporate Limits.	1,007
	Downstream Kings Way (Upstream).	1,010
	Amistad Boulevard (Upstream).	1,031
	Upstream Kings Way (Upstream).	1,064
	Upsteam Corporate Limits.	1,064

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1157 Filed 1-15-79; 8:45 am]

[4210-01-M]

[Docket No. FI-2835]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Charlottesville, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Charlottesville, Virginia. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Charlottesville, Virginia.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Charlottesville, Virginia, are available for review at the Planning Office, Department of Community Development, City Hall, 7th and Main Streets, Charlottesville, Virginia.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Charlottesville, Virginia.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, above mean sea level
Rivanna River	Chesapeake Street Extended.	328
	Riverview Street Extended.	333
	Fairway Avenue Extended.	334
	U.S. 250	339
	Confluence with Meadow Creek.	342
Meadow Creek.....	Holmes Avenue.....	344
	Glendale Road Extended.	346
	Essex Road Extended.....	403
	King Mountain Road Extended.	404
	Hydraulic Road	420
	Rt. 250 By-Pass.....	427
	Earhart Street	431
	Private Road	435
North Fork Meadow Creek.	Confluence w/Meadow Creek.	435
	200' upstream from Emmet Street.	440
	1,000' upstream from Emmet Street.	445
	50' downstream from Cedar Court Road.	451
	Cedar Court Road.....	456
Moores Creek.....	Downstream Corporate Limit.	332
	Monticello Avenue Extended.	338
	Palatine Avenue Extended.	344
	Meridian Street Extended.	353
	Old Scottsville Road.....	359
	Hartman Mill Road Extended.	362
Rock Creek	Confluence with Moores Creek.	365
	5th Street Downstream..	370
	5th Street Upstream.....	373
	Prospect Avenue Extended.	379

Source of flooding	Location	Elevation in feet, above mean sea level
	Orangedale Avenue Extended.	381
	Elkhorn Road Extended	390
	Briarcliff Avenue Extended.	395
	Laurel Circle Extended..	400
5th Street Creek ...	Confluence with Rock Creek.	373
	700' upstream from confluence.	375
	1,000' upstream from confluence.	380

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 7, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1158 Filed 1-15-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4008]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Richmond, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Richmond, Virginia. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Richmond, Virginia.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Richmond, Virginia, are available for review at the City Clerk's Office, City Hall, 900 East Broad Street, Richmond, Virginia.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Richmond, Virginia.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, above mean sea level
James River	Chesterfield County Line.	28
	Confluence w/Broad Rock Creek.	33
	I-95	36
	Mayos Bridge	37
	9th Street Bridge	39
	Browns Island Dam (Upstream Side).	46
	Robert E. Lee Bridge (Upstream Side).	50
	Hollywood Dam (Upstream Side).	64
	Boulevard Bridge (Upstream Side).	89
	Powhite Freeway	101
	Williams Island Dam (Upstream Side).	120
	Hugenot Bridge (Upstream Side).	126
	At Stony Point Creek	131
	Boshers Dam	135
	Pittaway Creek	138
Pocosham Creek ...	Mouth	134
	Walmsley Boulevard (Upstream Side).	144
	1,000 feet upstream of Walmsley Boulevard.	149
	2,000 feet downstream of Hull Street.	156
	Hull Street (Upstream Side).	180
	Whitehead Road	186
Grindall Creek.....	Walmsley Boulevard (Upstream Side).	58
	Castlewood Road	62
	1st Crossing of Seaboard Coast Line Railroad (Upstream Side).	82
	2nd Crossing of Seaboard Coast Line Railroad (Upstream Side).	103
Broad Rock Creek	Mouth	33
	Richmond Petersburg Turnpike.	33
	Seaboard Coast Line Railroad (Upstream Side).	43
	9th Street	44
	Krouse Street (Upstream Side).	52
	Lynhaven Avenue	60
	Berwyn Street (Upstream Side).	65
	Columbia Street (Upstream Side).	68
	Seaboard Coast Line Railroad (Upstream Side).	112
	5,000 feet upstream from the Seaboard Coast Line Railroad.	143
Goodes Creek	Mouth	44
	Bellmeade Avenue (Upstream Side).	59
Stony Run.....	Mouth	46
	E. Richmond Road (50 feet downstream side).	53
	E. Richmond Road (Upstream Side).	62
	Stony Run Parkway	73
	Henrico County Line	77
Powhite Creek.....	Mouth	102
	Forest Hill Exist (Upstream Side).	116
	Southern Railway	120
	Powhite Freeway	131
Rattlesnake Creek	Mouth	123
	Riverside Drive	123
	Dam upstream of Riverside Drive (Upstream Side).	133
	Cherokee Road (Upstream Side).	146
	Weyburn Road	154
	Chippenham Parkway (Upstream Side).	166
Stony Point Creek	Mouth	131
	Dam upstream of Cherokee Road.	131
	0.5 Miles upstream from mouth.	151
Cherokee Creek.....	Mouth	135
	Cherokee Road & Dam (Upstream Side).	146
	Apache Road (Upstream Side).	159
	Cedar Grove Road (Upstream Side).	160
	Garden Road (Upstream Side).	177
Pittaway Creek.....	Mouth	138
	Cherokee Road (Upstream Side).	142
	Wainfleet Drive (Upstream Side).	161
	Dam 4,800 feet upstream of Wainfleet Road (Upstream Side).	222

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has

been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1159 Filed 1-15-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4051]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Hoquiam, Grays Harbor County, Wash.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Hoquiam, Grays Harbor County, Washington. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Hoquiam, Grays Harbor County, Washington.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Hoquiam, Grays Harbor County, Washington, are available for review at the City Hall, 609 8th Street, Hoquiam, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Hoquiam, Grays Harbor County, Washington.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, above mean sea level
Hoquiam River	Upstream Hoquiam Corporate Limits.	10
	Confluence with Little Hoquiam River.	10
	Confluence with East Hoquiam River.	10
	Burlington Northern Railway.	10
	U.S. Highway 101 North (6th Street).	10
	U.S. Highway 101 South (Simpson Avenue).	10
	Burlington Northern Railway.	10
East Hoquiam River.	Panhandle Road	10
	Upstream Corporate Limits.	10
Little Hoquiam River.	U.S. Highway 101	10
	Confluence with Hoquiam River.	10

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 F.R. 7719).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1160 Filed 1-15-79; 8:45 am]

[4410-01-M]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 812-79]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart M—Land and Natural Resources Division

DELEGATING TO THE ASSISTANT ATTORNEY GENERAL OF THE LAND AND NATURAL RESOURCES DIVISION THE DUTIES IMPOSED UPON THE ATTORNEY GENERAL BY SECTION 115(b) OF THE "URANIUM MILL TAILINGS RADIATION CONTROL ACT OF 1978"

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Section 115(b) of the Uranium Mill Tailings Radiation Control Act of 1978, requires that the Attorney General conduct a study to determine who owned, operated or controlled sites where uranium was mined or processed and where residual radioactive materials remain. The purpose of the study is not only to identify such persons, but also to determine if they have any legal responsibility for any reclamation or other remedial action which might be required with respect to such sites and, based upon the study, to take appropriate legal action to require such persons to pay all or part of any costs incurred by the United States for such remedial action for which the Attorney General determines such person is liable. The Act further requires the Attorney General to publish the results of his study and provide copies of it to the Congress.

This Order delegates to the Assistant Attorney General of the Land and Natural Resources Division, the authority provided for in section 115(b) of the Act.

EFFECTIVE DATE: January 5, 1979.

FOR FURTHER INFORMATION CONTACT:

James W. Moorman, Assistant Attorney General, Land and Natural Resources Division, Washington, D.C. 20530 (202-633-2701).

§ 0.65 [Amended]

By virtue of the authority vested in me by 5 U.S.C. 301 and 28 U.S.C. 509, 510, § 0.65 of Subpart M of Part O of Chapter I of title 28, Code of Federal Regulations, is amended by adding a new paragraph (h) immediately after paragraph (g) to read as follows:

* * * * *

(h) Conducting the study of processing sites required by section 115(b) of

the Uranium Mill Tailings Radiation Control Act of 1978, publishing the results of such study and furnishing the results thereof to the Congress and, based on such study, determining and taking whatever actions, if any, shall be appropriate and in the public interest to require payment by such persons as the study identifies, of all or any part of the costs incurred by the United States for such remedial action for which he determines such persons are liable.

Dated: January 5, 1979.

GRIFFIN B. BELL,
Attorney General.

[FR Doc. 79-1481 Filed 1-15-79; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 963-2]

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

Emission Offset Interpretative Ruling

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: This rule describes the requirements for preconstruction review which apply to large new (or modified) air pollution sources affecting areas with air quality worse than the levels set to protect the public health and welfare. The action makes certain revisions to ERA's Emission Offset Interpretative Ruling of December 21, 1976 (41 FR 55524). These revisions are a result of the public comments (including four public hearings) on the December 21, 1976, Interpretative Ruling and changes required by the Clean Air Act Amendments of 1977 (Pub. L. 95-95, note under 42 U.S.C. 7401).

DATES: These changes are applicable to permits applied for on or after January 16, 1979. States may, if they so desire, make these changes applicable on a retroactive basis unless specified otherwise in the Ruling. Comments on specified issues should be submitted in accordance with the proposal published elsewhere in today's FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

D. Kent Berry, Office of Air Quality Planning and Standards, Environmental Protection Agency, Mail Drop 11, Research Triangle Park, North Carolina 27711, Telephone: 919-541-5341.

SUPPLEMENTARY INFORMATION: On December 21, 1976, EPA issued an Interpretative Ruling (41 FR 55524) addressing the issue of whether and to what extent national ambient air quality standards (NAAQS) established under the Clean Air Act may restrict or prohibit construction of major new or modified stationary air pollution sources. The Ruling provides, in general, that a major new source, which emits pollutants in excess of specified amounts and would otherwise contribute to an existing violation of a national standard, may be constructed 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. Where such a source would otherwise cause a new violation of an NAAQS, offsets or additional control must be provided to prevent a new violation of the standards.

Although this Ruling was made immediately effective, the Agency solicited written comments and held public hearings in San Francisco, Dallas, Chicago, and New York. The comments received (including a summary of those comments) and the public hearing records are available for public inspection and copying during normal business hours at: Public Information Reference Unit, Environmental Protection Agency, Room 2922 (EPA Library) 401 M Street, SW., Washington, D.C. 20460.

PERMITS REQUIRED FOR NEW OR MODIFIED AIR POLLUTION SOURCES

The Federal Clean Air Act and most State regulations require that new air pollution sources and modifications of existing sources which would increase air pollution emissions must obtain a permit *before construction is begun.* The State (or local) new source review procedures apply to almost all new or modified air pollution sources. This review is intended to ensure that new sources will meet all applicable air pollution regulations adopted by the States. In addition, larger sources (which will have increased emissions of 50 tons per year of any air pollutant) [1] will be subject to more stringent requirements relating to the source's impact upon air quality.

A given source may have air pollution impacts in an area which has clean air or in an area which has dirty air. Some sources can affect both types of areas. The type of review requirements that a new source must comply with depends on whether the source affects a dirty air or clean air area. A source which impacts an area where the air is cleaner than the national ambient air quality standards (NAAQS) is subject to regulations for preventing significant deterioration (PSD) of air quality.[2] The purpose of these regulations is to keep clean air clean and the primary focus is to limit new emissions of sulfur oxides and particulate matter.

A new source that would affect a dirty air area will also be subject to EPA's Emission Offset Interpretative Ruling, the main provisions of which require the new source to meet the lowest achievable emission rate for the problem pollutant(s) and to obtain more than equivalent offsetting emission reductions (emission offsets) from existing sources. A source may be subject to PSD for one pollutant and to the Offset Ruling for another pollutant, or may affect both clean and dirty areas for the same pollutant.

At the present time, the Offset Ruling is generally carried out by the States as part of their own new source review procedures. In most areas, EPA's Offset Ruling will terminate as of July 1, 1979, and will be replaced by State-adopted new source review requirements. However, if States fail to adopt an acceptable plan to attain the NAAQS by the dates specified in the Clean Air Act, the Act requires that no permits for major new sources applied for after June 30, 1979 be issued.

The PSD program is generally being carried out by EPA through its Regional Offices. Thus, large sources must now get a preconstruction permit from both the State (for offsets) and EPA (for PSD). However, many States will be developing their own PSD program, allowing the air permit program to be consolidated at the State level. Until this occurs, major source owners should obtain their State permit before applying to EPA for a PSD permit. It is recommended that source owners consult with both EPA and the States before submitting a permit application to determine what requirements will be applicable and what kind of information must be submitted. To avoid delays, major source owners should apply for a permit as early in their planning process as possible and should allow for a minimum of three months from the date of application for a permit to be issued.

IMMEDIATELY EFFECTIVE CHANGES RESULTING FROM 1977 CLEAN AIR ACT AMENDMENTS

1. *Baseline.* In the December 21, 1976 Ruling, the baseline for deter-

[1] The criteria for determining the applicability of these more stringent requirements are actually more complex and can be found in the specific regulations mentioned below.

[2] See Federal Register of June 19, 1978, pp 26380-26410.

mining emission offset credit was the SIP emission limitations in effect for existing sources (i.e., control of existing sources beyond that required by the SIP could be used to offset emissions from new sources). However, for areas where EPA had formally found the State plan inadequate and had requested revision, the baseline was the emissions that would result from application or reasonably available control measures (RACM) by existing sources. Furthermore, even where the baseline was the existing SIP rather than RACM, the 1976 Ruling provided for several adjustments to the baseline to take account of unusual circumstances. Explicit provisions were included to govern situations where there was no applicable SIP requirement, where offset credit would come from switching to cleaner fuels, and where the permitted emission level exceeded the uncontrolled emission factor of the source. 41 FR at 55529 cols. 2-3. In addition, EPA does not interpret the 1976 Ruling as allowing offset credit for tightening SIP requirements for a source to reduce the emission level allowed by the SIP down to the level allowed for the source by applicable new source performance standards (NSPS) or national emission standards for hazardous air pollutants (NESHAPS) requirements (i.e., requirements under Sections 111 and 112, respectively, of the Act). Any other approach would allow offset credit for so-called "paper" reductions, where the SIP is adjusted but no actual tightening of requirments under the Act occurs. These special provisions all implement the general principle behind the 1976 Ruling, that offsets must ordinarily represent reductions in emissions below the emissions allowed by existing requirements.

Section 129(a)(1) of the Clean Air Act Amendments of 1977 (Pub. L. 95-95 (note under 42 U.S.C. 7502)) states that the 1976 Ruling, as it may be modified, shall remain in effect, except that the baseline for determining emission offset credit "shall be the applicable implementation plan of the State in effect at the time of application for a permit * * *." The legislative history indicates that this provision was intended to eliminate the provision in the 1976 Ruling that the baseline was RACM where EPA had called for a SIP revision. But this provision was not inntended to displace the provisions under the 1976 Ruling to accommodate special circumstances, giving credit only for reductions below the emissions allowed by existing requirements.

For the foregoing reasons, the ruling is revised to eliminate the requirement that the baseline be RACM where EPA has called for SIP revisions.[3] EPA invites public comment on its policy that the Ruling does not allow offset credit for tightening SIP requirements down to NSPS or NESHAPS levels, and invites comment on whether the language of the Ruling establishing the baseline should be revised to make this policy more explicit.

2. *Nonattainment requirements under the amended Act.*—a. *Amendments required by nonattainment provisions of the Act.* New Part D of Title I of the Act[4] requires States to revise their SIP's for every area where an NAAQS is not being met. For each standard, areas were designated, under Section 107(d) and 171(2) of the Act, as either attaining the standard (attainment areas), violating the standard (nonattainment areas), or areas that cannot be classified on the basis of available information (unclassifiable areas).[5] For areas initially designated as nonattainment areas,[5] the deadline for States to submit required SIP revisions is January 1, 1979. Revised SIP's meeting the requirments of Part D must be in effect by July 1, 1979. For areas initially designated as attainment or unclassifiable but are later found to be nonattinment areas, additional time may be necessary for development, submittal and approval of the required SIP revisions.

The Act provides that the Ruling be superseded after June 30, 1979—(a) by preconstruction review provisions of the revised SIP, if the SIP meets the requirements of Part D, or (b) by prohibition on construction under the applicable SIP and Section 110(a)(2)(I) of the Act, if the SIP does not meet the requirments of Part D. The Ruling is now being amended to reflect this, and to state that the Ruling will remain in effect to the extent not superseded under provisions of the Act. The above prohibition on major new source construction does not apply to a source whose permit for construction or modification was applied for during a period when the SIP was in compliance with Part D, or before the deadline for having a revised SIP in effect that satisifies Part D. The Ruling is amended to reflect this.[6]

b. *Additional effects of nonattainment requirements on this Ruling.* By its terms, this Ruling has always applied to proposed major sources and major modifications anywhere in the State that will cause or contribute to a violation of an NAAQS, regardless of whether the sources or modifications were within an area determined in general to be nonattainment. 41 FR 55528 col. 2. Designations of nonattainment, therefore, do not limit the areas within which this Ruling applies.

In EPA's view, the Act requires that for any area disignated as monattainment for any NAAQS, the preconstruction review provisions under Part D, or the prohibition on construction under the applicable SIP and Section 110(a)(2)(I), must apply to all major sources within the State that will cause or contribute to a violation of the NAAQS within an area initially designated as a nonattainment area. Consequently, after July 1, 1979, the Intrepretative Ruling will only apply in the followng situations: (a) To sources in one State which contribute to a violation of an NAAQS only with another State, (b) during the time allowed for the development and approval and/or promulgation of revised SIP in an area which is subsequently determined to violate an NAAQS, and (c) during any extended time allowed under Section 110(b) for development of a SIP revision of an area that violates only a secondary NAAQS. Also, for sources in one State (which has an acceptable SIP) that would contribute to a violation in another State (which does not have an acceptable SIP), the restrictions on new source construction under the applicable SIP and Section 110(a)(2)(I) do not apply.

Under the preconstruction permit requirements in Part D, States have two basic options for dealing with proposed new major sources within a nonattainment area that cause or contribute to a violation of an NAAQS. The SIP may provide an allowance for growth while assuring reasonable further progress toward attainment, and new sources may be allowed that do not result (individually or in the aggregate) in emissions that exceed the allowance. If the growth allowance is used up, or if none is provided, the State's other option is to allow sources to be constructed only if case-by-case offsets are obtained sufficient to provide for reasonable further progress towards attaining the NAAQS by the attainment date prescribed under Part D. If the SIP for the nonattainment

[3] The 1977 Amendments and legislative history clearly call for this Amendment. See 123 Congressional Record at S 9165 col. 2 (daily ed. June 6, 1977). therfore, EPA has determined that notice and public procedure are unnecessary before making this Amendment.

[4] Part D of the Act, which includes Sections 171 through 178 (42 U.S.C. 7501-7508).

[5] Initial designations were published by EPA on March 3, 1978, 43 FR 8962. Revisions to the initial designations were recently published for some States (43 FR 40412, 43 FR 40502, and 43 FR 45993, September 11 and 12, and October 5, 1978) and will soon be published for other States. Designations are codified at 40 CFR 81.300 *et. seq.*

[6] These amendments to the Ruling do no more than state that the Act provides for supersession of this Ruling. Furthermore, it is important to have a clear statement at this time of the earliest possible application of the prohibition on major new source construction, to assist industrial planning. For these reasons, EPA has determined that soliciting public comment before making these amendments would be unnecessary and contrary to the public interest.

area is not being carried out, however, no permits may be issued within the area as required by Section 173(4).

The discussion in this notice of the requirements for revised SIP's under Part D, and for a prohibition on construction under the applicable SIP and Section 110(a)(2)(I), is provided to place the Ruling in perspective, and does not constitute regulations promulgated or final action taken by the Administrator to establish or interpret those requirements. Many of the approaches used by the Agency in revising the Ruling may be used by the States as guidance in developing provisions under Part D; but again, except as noted below, this does not consititute regulations or final action establishing or interpreting requirements for preconstruction review provisions. The Agency's nationally applicable policy summarizing the elements that a SIP submittal must contain to meet the requirements of Part D was published in the FEDERAL REGISTER on May 19, 1978, 43 FR 21673, and the discussion and guidance provided by this notice merely supplement that policy.

The only exception is that certain terms in the Ruling are also used in Sections 172(b)(6), 173, and 302(j) of the Act to prescribe the requirements for revised preconstruction review provisions. Therefore, the definitions in this ruling of the terms "source," "potential," and "modification" (see discussion below on additional flexibility in defining "modification") apply to the statutory requirements for preconstruction review provisions under Sections 110(a)(2)(I) and Part D as well as under this Ruling. The discussion below of "lowest achievable emission rate," and of cut-offs to limit review of small sources, also apply to State preconstruction review programs under Section 173 of the Act [although not to the prohibition on construction under Section 110(a)(2)(I)].

MAJOR SOURCE ISSUES

1. *Sources subject to review*—a. *Definition of "potential" to emit and definition of cutoff points.* Section 129(a) of the 1977 Amendments requires that the offset requirements be applicable to all major stationary sources (including Federal facilities) as defined in Section 302 of the Act (i.e., sources with potential emissions of 100 tons or more per year). The emission offset requirements currently apply to sources with *allowable* emissions greater than 100 tons per year. Since the 1977 Act Amendments did not define potential emissions and there has been some question as to the Congressional intent of this term, this change was not made immediately effective. However, this issue was dealt with in EPA's proposed regulations for preventing significant deterioration (PSD) of air quality (42 FR 26388). As set forth in the final PSD regulations, potential emissions are defined in terms of uncontrolled emissions but sources are exempt from the best available control technology and the air quality related tests if the source's allowable emissions would be less than each of the following cutoff points: 50 tons per year, 1000 pounds per day or 100 pounds per hour. The short-term criteria are included to ensure that a source that operates seasonally or intermittently is adequately dealt with regarding its impact on short-term air quality. For the same reasons as are discussed in the preamble to the PSD regulations, the Emission Offset Ruling is revised to require review of sources based on their uncontrolled emissions, but to exempt sources from the major conditions of the Ruling if the allowable emissions are less than the above cutoff points.

It should be noted that any source with allowable emissions less than the above amounts which is exempted from the offset requirements will use up part of the State's allocation for growth (see discussion in preceding section) at the time such source begins operation. Thus, a State plan may need to require additional control of existing sources (or more rapid compliance) in order to achieve the "annual reasonable further progress toward attainment" required by the Act.

b. *Definition of "source."* A number of commenters indicated the need for a more explicit definition of "source." Some readers found that it was unclear under the 1976 Ruling whether a plant with a number of different processes and emission points would be considered a single source. The changes set forth below define a source as "any structure, building, facility, equipment, installation, or operation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control)." This definition precludes a large plant from being separated into individual production lines for purposes of determining applicability of the offset requirements.

The revised definition of "source" is only a clarification, and represents no change from EPA's intent in the December 1976 Ruling and the way the Ruling has been implemented. The definition is consistent with the use of this term in other SIP-related regulations (e.g., 40 CFR Part 51, Appendix C), and is identical to the approach recently adopted for the Prevention of Significant Deterioration (PSD) regulations (see 40 CFR 52.21(b)(4), 43 FR 26388, June 19, 1978).

c. *Public comment.* Comments were originally solicited on the definition of cut-off points to limit review of small sources in the Advance Notice of Proposed Rulemaking published on December 21, 1976. 41 FR 55559. Comments were received on the definition of "source" in the 1976 version of this Ruling. The definitions of the term "potential" and "source," and the definition of cut-off points to limit review, were all the subject of extensive public comment in response to EPA's proposed PSD regulations, which contained an approach very similar to that adopted here. The definitions adopted here were based on all of this public comment, and EPA has determined that it is unnecessary to postpone adoption of these definitions until after further comment is solicited and evaluated. However, since a major industrial group has requested another opportunity to comment on these important issues, EPA is inviting further comment on these definitions, particularly to identify any considerations that were not relevant in developing the PSD regulations, and any additional considerations relevant to the application of these definitions to requirements for new preconstruction review programs under Section 173. Any comments must be submitted on or before February 15, 1979.

d. *Applicability to modifications accompanied by emission reductions within the same source (intrasource offsets).* Some commenters suggested that the Ruling should be amended to exempt a modification of an existing source which increases allowable emissions by 50 tons per year, 1000 pounds per day, or 100 pounds per hour, or more if there are accompanying reductions within the same source (intrasource offsets) such that the net increase from the source is less than the above amounts, or even that there is a net decrease. It was even suggested that this exemption apply to the addition of new facilities at an existing source. Where a state implementation plan is revised and implemented to satisfy the requirements of Part D, including the reasonable further progress requirement, the plan requirements for major modifications may exempt modifications of existing facilities that are accompanied by intrasource offsets so that there is no net increase in emissions. The Agency endorses such exemptions, which would provide greater flexibility to sources to effectively manage their air emissions at least cost. However, as long as the emission Offset Interpretative Ruling remains operational, the exemption will not be allowed for the reasons stated below. The text of the Ruling is rewritten to state in positive terms that the exemption is not permitted. Since the 1976 Ruling invited public

comment on the requirements for modifications, and since this amendment clarifies the original language without changing the substance, EPA has determined that additional notice and public procedure before making the amendment are unnecessary.

If the Ruling were amended in the suggested manner, a source owner could construct or substantially modify a facility by obtaining only part of the offsets ordinarily required and avoiding the other conditions required for major pollution sources in nonattainment areas prior to there being an adequate Part D implementation plan. This would conflict with several of the basic purposes of the Ruling, which are to assure that sufficient offsets be obtained to represent reasonable progress toward attainment of the applicable standard, that the new facilities meet the lowest achievable emission rate (LAER), and that other sources owned by the applicant be in compliance with the approved SIP or on acceptable compliance schedules. The need to reduce new emissions through these requirements is particularly great before revised plans under Part D are adopted and implemented. Therefore, it is not enough that there be no net increase in emissions; there are additional independent requirements which must be met. There is no reason to depart from this principle simply because offsets happen to come from a facility within the same source. Since the facility will be new or substantially modified, it has an opportunity to employe LAER and satisfy the other requirements like any other source subject to the Ruling. This has been the consistent application of this Ruling.

Unlike this Ruling, EPA's recently-published PSD regulations include an exemption for modifications of existing facilities which are accompanied by sufficient intrasource offsets that there would be no net increase in emissions (see discussion at 43 FR 26394, June 19, 1978). EPA believes that the need to reduce new emissions as much as possible is greater under this Ruling for an area where standards are violated than under the PSD requirements for a clean area where deterioration is the only concern.

Modifications of existing facilities accompanied by sufficient intrasource offsets so that there would be no net increase in emissions may, however, be exempted by the States from the new source review procedures under Part D that will supersede this Ruling. This exemption would not be applicable where a major facility is added to or is reconstructed at a source, whether the addition is to replace production capacity or for growth. The above exemption is permitted under the SIP because, to be approved under Part D, plan revisions due by January 1979 must contain adopted measures assuring that reasonable further progress will be made. Furthermore, in most circumstances, the measures adopted by January 1979 must be sufficient to actually provide for attainment of the standards by the dates required under the Act, and in all circumstances measures adopted by 1982 must provide for attainment. See Section 172 of the Act and 43 FR 21673-21677 (May 19, 1978). Also, Congress intended under Section 173 of the Act that States would have some latitude to depart from the strict requirements of this Ruling when the State plan is revised and is being carried out in accordance with Part D. Under a Part D plan, therefore, there is less need to subject a modification of an existing facility to LAER and other stringent requirements if the modification is accompanied by sufficient intrasource offsets so that there is no net increase in emissions. Consequently, for a plan approved and implemented under Part D, it is acceptable for the State to include the above exemption for intrasource offsets in its new source construction under the State plan and Sections 110(a)(2)(I) and 173(4) must apply to major modifications regardless of intrasource offsets if the plan is found not to satisfy Part D or is not being implemented, because in those instances the plan cannot be relied upon to assure reasonable further progress and, eventually, attainment.

Other Changes to the Ruling

1. *Definition of "significant" air quality impact.* Several commenters requested that EPA provide specific quantification as to the incremental level of pollution that would be considered as contributing to an existing violation of an NAAQS. The Ruling has been revised to include "significance levels" which are generally based on the Class I prevention of significant deterioration (PSD) increments contained in Section 163 of the Act. A new or modified source will not be considered to cause or contribute to a violation of an NAAQS if the air quality impact of the source is less than the specified significance levels. The significance levels are only applicable when a major source is to be located in a "clean" area (i.e., a locality where both the primary and secondary standards are being met), but would impact an area that exceeds an NAAQS some distance away. The significance levels are not intended to be used for PSD purposes where the Class I increments are concerned, nor are they to be used for implementing Condition 4 of Section IV of the Ruling (i.e., emission offsets must result in a net air quality *benefit*). Significance increments are not specified for photochemical oxidants, since atmospheric simulation models are not adequate to predict the air quality impact of a single source of volatile organic compounds (VOC). Further discussion of offsets for VOC sources appears below.

It is possible for a source with a good engineering practice stack height and substantial plume rise, and with very good controls (e.g., particulate matter from fuel combustion sources) to not exceed the significance increments at any location. Thus, such a source would be able to locate just at the edge of a locality where the particulate standard is violated without being subject to the Ruling. This situation would be most common for particulate matter (since controls exceeding 99% are normal) and would rarely occur for the other pollutants.

2. *Relationship of offset requirements to designations of attainment status.* On March 3, 1978, EPA published the attainment status of all States in relation to the NAAQS. 43 FR 8962. However, as noted above, this Ruling has always provided that determinations be made on a case-by-case basis independent of any general determination of nonattainment. 41 FR 55528. Therefore, the determination under this Ruling of whether a source will cause or contribute to a violation of an NAAQS will continue to be made on a case-by-case basis. A source may try to prove that a locality meets an NAAQS even if the locality is part of a designated nonattainment area. There are several reasons for this. First, the initial determinations were made on the basis of 1975 or 1976 air quality data, while the determination of whether a source would cause or contribute to a violation of an NAAQS must be made as of the new source's start-up date. Thus, a source locating in a nonattainment area which is projected to be an attainment area as part of an approved SIP control strategy by the source's start-up date may not be subject to the requirements of the Offset Ruling. Also a State may have designated a large county or air quality control region (AQCR) as nonattainment on the basis of a localized violation of standards in a small portion of the county or AQCR. The designations were designed to provide a starting point for State planning, and were not designed to resolve issues of air quality for purposes of individual permit applications. While not altering the requirement of the Ruling that air quality determinations be made on a case-by-case basis, EPA has amended the language of the Ruling to explain the relationship in practice between the Ruling and the Section 107 designations.[7]

[7] Because these amendments are technical and conforming, and do not change the sub-

Footnotes continued on next page

a. *Sources in attainment or unclassifiable areas.* Certain portions of the Ruling may be applicable in areas designated as attaining the NAAQS or which cannot be classified as to their attainment status. A source locating in such an area which would contribute to a violation of an NAAQS anywhere (i.e., exceed the above significance levels at the site of the violation) must meet Conditions 1, 2 and 4 of Section IV of this Ruling. This is true regardless of the designation that applies to the locality where the violation would occur. Although full emission offsets are not required, such a source must obtain emission offsets sufficient to compensate for its air quality impact where the violation occurs. (States and local agencies are free to require larger offsets if deemed appropriate.)

Most such sources will be subject to prevention of significant deterioration (PSD) requirements, which include a requirement for best available control technology for all pollutants regulated under the Act. In addition, after August 7, 1978, many sources subject to PSD must present air quality monitoring data at the proposed site as part of their application to construct, especially where there is good reason to believe that a new source would cause or worsen a violation of an NAAQS. Thus, major sources applying for a permit after August 7, 1978, will not be exempt from the requirements of this Ruling simply because no air quality data are available to determine whether the source would adversely impact upon an NAAQS.

b. *Sources locating in a "clean" portion of a designated nonattainment area.* A source locating in a clean portion (or which will be clean as of the new source start-up date) of a designated nonattainment area may be exempt from the requirements of this Ruling if the source would not exceed the significance levels discussed above in the *actual* area of nonattainment (as of the new source start-up date). If such a source *would* exceed the significance increments in the actual nonattainment area, it is subject to the same requirements applicable to sources in designated attainment or unclassified areas (i.e., Conditions 1, 2 and 4).

c. *General impact of nonattainment designations on the proceedings.* It will be assumed as the starting point in reviewing a permit application that every location within a designated nonattainment area will exceed the NAAQS (as of the new source start-up date), and that any source with allowable emissions exceeding 50 tons per year, 1000 pounds per day, or 100 pounds per hour locating in the area will significantly contribute to a violation. However, if the applicant or any other participant presents a substantial and relevant argument (including any necessary analysis or other documentation) why that assumption is incorrect, then the applicability of this Ruling would be determined by the specific facts in the case.

3. *Exemptions.* The Ruling has been revised to exempt temporary emissions, such as pilot plants, portable facilities which will be relocated away from the nonattainment area after a short period of time, and emissions resulting from the construction phase of a new source, from the emission offset and net air quality benefit requirements (Conditions 3 and 4 of Section IV of the Ruling). The LAER requirement and other conditions of the Ruling are still applicable to such sources. A similar exemption would also be available to resource recovery facilities utilizing municipal solid waste (including refuse derived fuel and/or sewage sludge from municipal sources) to provide more than 50% of the heat input for generating steam or electricity. In addition, the use of refuse derived fuel in an existing boiler would not qualify as a modification and would not be subject to the Interpretative Ruling.

The exemption for temporary emissions does not change the intent of the original Ruling and is consistent with interpretations issued under the original Ruling. Emissions occurring for less than two years within the nonattainment area would generally be considered temporary. Emissions for longer periods of time might also be considered to be temporary (such as the emissions related to the construction of power plants and other large sources), but should be dealt with on a case-by-case basis.

Again, it should be noted that any source which is exempted from the offset requirements will use up part of the State's allocation for growth at the time such source begins operation. Thus, a State plan may need to require additional control of existing sources (or more rapid compliance) in order to achieve the "annual reasonable further progress toward attainment" required by the Act.

4. *Geographic applicability to major VOC sources.* One of the issues not totally resolved in the December 21, 1976, Ruling was the determination of the areas where offsets for sources of volatile organic compounds (VOC) would be required, especially since atmospheric simulation modeling techniques are generally not available to estimate the air quality impact on an individual VOC source. For rural VOC sources, as for other sources, offsets and other conditions of the Ruling were required for major sources that would cause or contribute to a violation of an NAAQS. Any source locating within a major metropolitan area (over 200,000 population) where the standard was violated was assumed to cause or contribute to the violation. 41 FR 55527 col. 1. However, no firm rules were adopted for application of the Ruling to sources outside of such areas, or for determining where offsets could be found for proposed sources in or out of such areas. Reviewing authorities were left with discretion to determine, on a case-by-case basis, whether any particular proposed rural source would cause or contribute to a violation, or whether any particular emission reduction would constitute an acceptable offset for a proposed source.

The Ruling did refer to a discussion of the rural oxidant problem published in the same FEDERAL REGISTER issue as the Ruling. 41 FR 55528 col 2, 55559-60. This discussion suggested tentative reasons why proposed VOC sources outside of major metropolitan areas should not need offsets, and why sources within such areas should obtain offsets from sources that are also within such areas. however, since that discussion was contained in an advance notice of proposed rulemaking, it was intended only to inform, not to govern individual permit decisions.

On the basis of comments received responding to the advance notice of proposed rulemaking, EPA has developed the proposal for rural VOC sources stated in the Ruling. Comments are invited on this proposal. Until final rulemaking on this issue is completed, this proposal represents EPA's interim policy for determining under this Ruling whether a proposed rural VOC source would cause or contribute to a violation or whether an emission reduction would constitute an acceptable offset for a proposed rural source.

Under the proposal, offsets will generally be required for VOC sources located in or affecting any area that is designated as nonattainment for oxidant or is otherwise shown to be exceeding the NAAQS for oxidant. There are many situations where a source locating outside a nonattainment area may adversely impact upon a nearby locality where the standard is violated. Since photochemical dispersion models are not available to estimate the air quality impact of a single VOC source, it is necessary to use a general approximation of the area around a nonattainment monitor where emissions would reasonably be expected to have an impact on a measured violation. Unless specific data are available to define the impact of a VOC source, offsets should be required for VOC sources locating

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stance of the Ruling, EPA has determined that notice and public procedures on them are unnecessary.

within 36 hours traveltime (under wind conditions associated with oxidant concentrations exceeding the NAAQS for oxidants) of a nonattainment monitor. This distance is based on evidence which suggests that precursor emissions which occur within 36 hours traveltime of each other interact to form oxidant.

In addition, the changes to the Ruling provide the owner of a proposed VOC source an opportunity to show that the emissions from the proposed source would have "virtually no effect on any area that exceeds the oxidant standard" and therefore the source would be exempt from the Ruling. This exemption is only intended for remote rural sources whose emissions would be very unlikely to interact with other significant sources of VOC or NO_x to form additional oxidant. Such a demonstration might include a showing that the proposed source would be located in an area that is not subject to multi-day stagnation conditions and that VOC and NO_x emissions within the same AQCR or within 36 hours traveltime are minimal. Suggestions from the public are invited on establishing specific criteria or cut-offs to assist applicants in making such a demonstration.

Generally, offsets will be acceptable if obtained from within the same AQCR as the new source or from other nearby areas which may be contributing to the oxidant problem affected by the proposed new source. As with other pollutants, it is desirable to obtain offsets from sources located as close to the proposed new source site as possible. If the proposed offsets would be from sources located at greater distances from the new source, the reviewing authority should increase the ratio of the required offsets and require a showing that nearby offsets were investigated and reasonable alternatives were not available.

5. *Changes to Section IV, Condition 2.* In the original Ruling, the reviewing authority was required to examine all enforcement orders for other sources owned by the applicant in the AQCR to determine if more expeditious compliance was practical. Some commenters pointed out that in interstate AQCR's, the reviewing authority has no control over compliance schedules or enforcement orders in the adjoining State(s). Also, in a very similar provision set forth in Section 173(3) of the Act, the demonstration concerning compliance by other sources owned by the applicant is specified on a state rather than an AQCR basis. Consequently, the Ruling has been changed to be consistent with the provisions in the 1977 Act Amendments. The wording of Condition 2 has also have been changed in accordance with Section 173(3) to clarify the various forms of ownership and control covered by Condition 2. Condition 2 is intended to be applied in a broad sense so as to cover subsidiaries controlled by the applicant and to all facilities owned by any individual business entity that controls a joint enterprise applicant.

For the time being, determinations of what entities control, are controlled by, or are under common control with, the applicant will be made on a case-by-case basis. However, to save time and resources of both applicants and decisionmakers, EPA proposes to establish criteria for determining issues of control. For example, any person with a ten percent voting interest in an entity, or with the power to make or veto decisions by the entity to implement major emission-control measures, might be deemed to control the entity. Such criteria would also be used for determining whether facilities are part of the same source, under Section II.A.1. of this Ruling. Since the definition of "source" is the same under the Agency's PSD regulations as well as this Ruling, the criteria for determining whether facilities are part of the same source are expected to be identical. Comments and suggestions are invited on such criteria for determining control.

6. *Change to Condition 4.* Condition 4 of the original Ruling required that an emission offset must also result in a "net air quality benefit" in the area affected by the new source. In response to questions as to whether an air quality analysis is necessary for VOC and NO_x emissions pursuant to the "net air quality benefit" requirement, the Ruling is clarified to indicate that fulfillment of the emission offset requirements of Condition 3 will be adequate to meet the requirements of Condition 4 for these pollutants.

It should be noted that the "net air quality benefit" test need not be interpreted as requiring an air quality improvement at every location affected by the source. This condition is intended to insure that the sources involved in an offset situation impact air quality in the same general area, but the net air quality benefit test should be made "on balance" for the area affected by the new source.

7. *Elimination of Condition 5.* Condition 5 of the original Ruling contained a prohibition on major source growth after January 1, 1979, in areas where EPA had called for a SIP revision, unless EPA had approved or promulgated the required SIP revision by that date. EPA had issued 221 notices of required SIP revisions in mid-1976. One of the principal purposes of the nonattainment provisions in the 1977 Amendments, however, was to revise this administrative approach. Under the Act, designation of an area as nonattainment constitutes, in effect, a call for a SIP revision. The required contents of the revision and the deadline for submittal are specified in the Act. The Act's revision requirements differ from those established in the Agency's 1976 calls for revisions. Furthermore, the limitation on growth that will result from a failure of the State to comply is set forth in Section 110(a)(2)(I) of the Act. The Administrator has, therefore, concluded that the 1976 calls for SIP revisions for nonattainment areas were superseded by the 1977 Amendments, as was the limitation on growth provided in Condition 5. Therefore, Condition 5 has been deleted from this Ruling.[8]

8. *Baseline where there is no meaningful SIP requirement.* Section IV.C.2 had previously provided that where the particulate emission limit in the SIP for fuel combustion exceeded the uncontrolled emission rate for the fuel being burned (as when a State has a single emission limit for all fuels), emission offset credit would be allowed only for control below the appropriate uncontrolled emission factor. Since this situation may occur for sources other than fuel combustion sources, this provision has been made more general and incorporated in Section IV.C.1.

9. *Fuel conversion.* The Interpretative Ruling as originally published, provided that the use of an alternative fuel would not be considered a modification subject to the Ruling if, prior to December 21, 1976, the sources could accommodate such alternative fuel. In an associated Advance Notice of Proposed Rulemaking published on December 21, 1976 (41 FR 55558), comments were solicited on whether this exemption should apply to sources affecting nonattainment areas. In the Administrator's judgment, the most appropriate way to handle fuel conversions where no major physical modification takes place is through the SIP revision process. In particular, new Section 124 of the Clean Air Act requires States to review their plans to ensure that they will be adequate to attain and maintain the national ambient air quality standards in light of known or anticipated fuel conversions. Furthermore, under Section 172(b)(4), emissions from fuel conversions must be considered in determining periodically whether the plan is adequate to assure attainment by the required date. Therefore, the Ruling still exempts a fuel conversion where the source is designed to accommodate the alternative fuel.

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[8] Since there is no question but that Section 110(a)(2)(I) was intended to supersede Condition 5, and since in any event recisions of the 1976 calls for SIP revisions eliminates any effect of Condition 5, EPA has determined that notice and public procedure on the elimination of Condition 5 are unnecessary.

For purposes of controls to protect air quality in clean areas, and controls that States must adopt in nonattainment areas, Congress provided that "modification" should not include a conversion to an alternative fuel by reason of an order under the Energy Supply and Environmental Coordination Act of 1974 or a natural gas curtailment plan pursuant to the Federal Power Act. see Sections 111(a) (4) and (8), 169(2)(C), and 171(4), 42 U.S.C. 7411(a) (4) and (8), 7479(2)(C), and 7501(4). EPA therefore has decided that it would be consistent with Congressional intent to exclude such conversions from the definition of "modification" in this Ruling as well.

To further conform the Ruling to the Act and avoid confusion, EPA has also qualified the definition of modification by adding the provision that a switch to an alternative fuel by reason of an order or rule under Section 125 of the Act (41 U.S.C. 7425) is not a modification.[9]

In nonattainment areas, States must deal with increased emissions from fuel conversions in their 1979 revisions. For conversions that are not major modifications as defined in the Ruling and for purposes of Part D, the States may deal with increased emissions by any means they choose. A State may include in its control strategy demonstration an assumption that all sources which could reasonably convert to a dirtier fuel will do so. Alternatively, the State may require fuel conversions which are exempt as a modification under the Ruling to obtain a permit prior to converting to an alternate fuel. Such conversions would then be required to obtain offsets on a case-by-case basis or would be reviewed against the allowance for growth provided for in the SIP under Section 172(b)(5). Although conversions that are not major modifications need not satisfy all of the conditions of Section 173, in the interest of simplicity the State may choose to deal with the increased emissions by making the conversions subject to these conditions.

10. *Banking.* One of the issues that was frequently raised in comments on the Ruling involved "banking" of emission reductions to allow for future new source growth. Banking was restricted by EPA because it was felt that banking would create a difficult accounting problem, probably would not result in any environmental benefit, and tended to dilute the potential benefits of the offset policy. However, the advocates of banking felt that if the offsets obtained in a given situation were considerably greater than the new source's emissions, some of the "excess" emission reductions should be "bankable" to allow for future growth. The general argument was that a "no-banking" rule would have an adverse air quality impact (at least in the short-term) by discouraging early clean-up of sources. For example, if a source were undergoing a modernization program, and retiring a number of obsolete facilities, a "no-banking" provision might encourage the owner to delay retirement of several of the facilities so that they could be used in future offset situations. Furthermore, the Clean Air Act Amendments of 1977 modified this restriction by allowing States to incorporate provisions for growth in SIP plans for nonattainment areas. Under Section 173(1) of the Act, emission reductions are compared to a "reasonable further progress" goal, and reductions beyond the minimum requirement may be used to offset future growth. In essence, the State becomes the banker and must decide how to allocate the banked emissions. Therefore, the restriction on banking in the Ruling has been removed for offsets approved after the date of publication of these changes in the FEDERAL REGISTER. States which wish to allow banking may do so, as long as it is recognized that there will be changes in the basis for approval of major new sources after June 30, 1979.

A reviewing authority may allow banked offsets to be used under the preconstruction review program required by Part D, as long as these banked emissions are identified and accounted for in the SIP control strategy. So long as the pollution control requirements under the Act are satisfied, the State is free to govern ownership, use, sale, and commercial transactions in banked emission offsets as it sees fit. A reviewing authority may not approve the construction of a source using banked offsets if the new source would interfere with the SIP control strategy or if such use would violate any other condition set forth for use of offsets. To preserve banked emission reductions, the reviewing authority must identify them in either a SIP revision or a permit. Furthermore, the reviewing authority should provide a registry to identify the person, private entity, or governmental authority that has the right to use or allocate the banked emission reductions, and to record any transfers of, or liens on, this right that the reviewing authority may allow. Additional comments on how banking should be implemented are solicited.

11. *Source shutdowns and curtailments.* A sub-issue related to banking is the credit which may be taken for source shutdowns or curtailments occurring prior to the date the new source application is filed. Footnote 7 of the original Ruling had restricted offset credit to situations where the shutdown or curtailment occurred as a result of an enforcement action and the new source was clearly a replacement. The Ruling has been changed to eliminate the requirement that a prior shutdown be related to an enforcement action in order to be used as offset credit. However, to ensure that an offset relates to the current air quality problem, it is necessary to put some limit on the credit that can be taken for shutdowns that have taken place in the past. Therefore, the Ruling requires that a source shutdown or curtailment must have occurred after the date of enactment of the 1977 Amendments or less than one year prior to the date the new source permit application is filed, whichever is earlier, in order to be acceptable as offset credit. Such credits may be banked, subject to the limitations outlined above.

12. *Equivalency of State regulations.* Some States have, or may wish to develop, offset regulations which differ in some of the details from the EPA Interpretative Ruling. EPA intends to approve such regulations if the State submits a demonstration that the overall impact on emissions in the areas where the regulation will apply is at least as stringent as the EPA Interpretative Ruling. At a minimum, the State regulations must contain the four major conditions specified in Section IV.A. These constraints do not apply to offset regulations applying after June 30, 1979, in accordance with the requirements of Section 173(1)(A); separate guidance will be issued for meeting these requirements. Nor does this apply to general waivers of the requirements of this Ruling, under Section 129(a)(2) of the Clean Air Act Amendments of 1977 (note under 42 U.S.C. § 7502).

13. *Technology transfer in determining LAER.* It has been EPA's interpretation that in determining the lowest achievable emission rate (LAER), the reviewing authority may consider transfer of technology from one source type to another where such technology is applicable. Although Congress changed the definition of LAER, EPA continues to believes that technology transfer may be considered in determining LAER. Congress intended to require new sources in nonattainment areas to apply the "maximum feasible pollution control," even if this involves "technology-forcing."[10] Therefore, the Agency does not feel

[9] EPA has determined that notice and public procedure prior to making this minor conforming amendment are unnecessary.

[10] See report to accompany H.R. 6161, H.R. Rep. No. 95-294, 95th Congress, First Session 215 (May 12, 1977). Furthermore, technology transfer and technology forcing are accepted concepts in determining both new source performance standards and reasonably available control technology under the Act.

that the phrase "achieved in practice by such class or category of source" (under Section 171(3)) prohibits technology transfers from other types of sources. If pollution-control technology can feasibly be transferred from one type of source to another, then for purposes of determining LAER, EPA will consider both types of source to be in the same "class or category of source." Comments on this interpretation and whether it is necessary or appropriate to revise the regulatory definition are solicited.

14. *Fugitive dust.* As noted above, an Advance Notice of Proposed Rulemaking was published on December 21, 1976 (41 FR 55558) which dealt with several issues closely related to the Interpretative Ruling published on the same date. Comments were urged to be submitted on both notices in a consolidated fashion.

One of the issues raised related to how fugitive dust, particularly rural fugitive dust which may significantly contribute to violations of the NAAQS for particulate matter, should be accounted for in performing new source reviews. This issue was also raised in conjunction with EPA's proposed PSD regulations. On the basis of comments received responding to the Advance Notice of Proposed Rulemaking, EPA has developed the proposal for fugitive dust associated with major sources stated in this Ruling. Comments are invited on this proposal. Until the final rulemaking on this issue is completed, this proposal represents EPA's interim policy for dealing with fugitive dust associated with a major source. Under the proposal, fugitive dust associated with major sources locating in clean portions of nonattainment areas or in attainment or unclassified areas would be subject only to applicable requirements for preventing significant deterioration of air quality (see 40 CFR 52.21). Under the PSD regulations, fugitive dust associated with a major source is subject to the best available control technology requirements, but is exempt from a review against the NAAQS and PSD increments. Fugitive dust associated with major sources locating in an actual nonattainment area [11] (and which is not exempt as a temporary source) would be subject to Conditions 1, 2 and 3 of Section IV.A. of this Ruling.

15. *Secondary emissions.* The original Ruling required that if a major new source would result in secondary emissions which could be accurately quantified, such emissions should also be dealt with under the Ruling (see footnote 3 at 41 FR 55528). Questions have arisen on the Agency's intent regarding secondary emissions, and further clarification is provided in the changes published today. A more specific definition is added as follows:

> "Secondary emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a major source or major modification, but do not come from the source itself. For purposes of this ruling, secondary emissions must be specific and well defined, must be quantifiable, and must impact the same general nonattainment area as the major source which causes the secondary emissions. Secondary emissions may include, but are not limited to:
>
> a. Emissions from ships or trains coming to or from a refinery, terminal facility, etc.
>
> b. Emissions from off-site support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a major source.

The Ruling indicates that secondary emissions need not be considered in determining whether the emission rates in Section II.C. would be exceeded. However, if a source is subject to the Ruling on the basis of the direct emissions from the source, the applicable conditions of this Ruling must also be met for secondary emissions.

The requirement that secondary emissions must impact the same general nonattainment area as the major source which causes the secondary emission means different areas for different pollutants. For all pollutants, however, the test is whether, in the actual area of nonattainment, there is any overlap between the areas of impact of the direct emissions and the indirect emissions. This is a pollutant-by-pollutant analysis. In other words, the conditions of the Ruling must be met for secondary emission of a particular pollutant only if the major source is subject to the Ruling conditions on the basis of direct emission of that same pollutant.

For nitrogen oxides, particulates, carbon monoxide, and SO_2, the areas of impact can be determined by modeling. If the source and the permitting authority disagree as to whether the secondary emissions impact the same area as the direct emissions, the source has the burden of proving it is correct by performing the necessary modeling. For VOC emissions, the areas of impact should be consistent with the treatment given to the direct emissions (see previous discussion on VOC sources). Under the proposal for VOC sources, the area of impact would be the areas to which the pollutants could be transported in 36 hours from the sources, assuming wind conditions associated with oxidant concentrations exceeding the NAAQS for oxidants (unless more specific data on source impacts are available).

A corollary of this aspect of the definition is that secondary emissions must be traceable to particular facilities. If this were not true, it would be impossible to determine the area of impact of the indirect emissions. Thus, for example, a new steel plant necessitates more electric power being produced; but if the power is supplied from a grid covering many States, the emissions could not be quantified and would not impact the same general nonattainment area. On the other hand, increased particulate emissions from a coke plant near the same steel plant would be considered to be secondary emissions if certain conditions were met. Those conditions would be that the emissions came from an existing coke plant which was not previously subject to the Ruling for those emissions, the coke plant emissions were increased above historical levels as a result of additional demand from the steel plant, and the coke plant was situated near the steel plant. The coke plant emissions are specific, quantifiable, and impact the same general nonattainment area as the direct emissions.

Since the 1976 Ruling invites public comment on the treatment of secondary emissions, and since this amendment to the Ruling only clarifies the language without altering the substance, EPA has determined that additional notice and public procedure thereon are unnecessary.

16. *Applicability of Ruling to new or revised NAAQS.* While this Ruling technically does not apply to new sources of lead emissions which would cause or contribute to a violation the newly established NAAQS for lead (43 FR 46246) during the period before the revised lead SIP's are submitted and approved, it is clear that such sources will be required to abate their emissions after construction if necessary to attain and maintain the lead standard. In addition, excessive lead emissions from a new source could result in health problems. Accordingly, States are urged to use their available authorities to review new sources of lead to protect against violations of the lead standard. The Ruling will continue to apply to VOC sources which cause or contribute to violations of the NAAQS for photochemical oxidant (ozone) which will be revised shortly (see proposal of June 28, 1978, 43 FR 26962). Specific proposals for dealing with new sources of pollutants subject to new or revised NAAQS in the context of the revised SIP's will be included in upcoming changes to 40 CFR 51.18.

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[11] Under existing EPA policy, a rural area that exceeds the NAAQS for particulate matter primarily because of fugitive dust emissions is not necessarily considered as nonattainment for purposes of SIP development and new source review (see "Fugitive Dust Policy: SIP's and New Source Review," available from EPA, Air Pollution Technical Information center, MD-35, Research Triangle Park, N.C. 27711.)

SEVERABILITY

EPA intends that the changes made by this notice be treated as severable. If a court should rule that one or more of the changes is not valid, EPA intends that the other changes remain in effect and that the provisions of the December 1976 Ruling that would have been amended by the invalid changes be in effect, unless the court rules that some other disposition is legally required.

The Agency finds good cause to make the changes announced today effective for permit applications filed on or after today, because the normal processing time between permit application and source construction provides adequate lead time for compliance with new requirements in the Ruling.

AUTHORITY

The Administrator has determined that this rulemaking is nationally applicable and is based on determinations of nationwide scope and effect. This rulemaking is issued under Section 129(a) of the Clean Air Act Amendments of 1977, Pub. L. 95-95, 91 Stat. 745, August 7, 1977 (note under 42 U.S.C. 7502) and Section 301 of the Clean Air Act (42 U.S.C. 7601).

Dated: December 29, 1978.

DOUGLAS M. COSTLE,
Administrator.

The Interpretative Ruling published by EPA on December 21, 1976, at 41 FR 55524, is revised and codified as a new Appendix S to 40 CFR Part 51. In the footnote to 40 CFR 51.18 "41 FR 55528, December 21, 1976," is deleted and "Appendix S" is inserted in its place. As revised Appendix S reads as follows:

APPENDIX S—EMISSION OFFSET INTERPRETATIVE RULING

I. INTRODUCTION

This appendix sets forth EPA's Interpretative Ruling on the preconstruction review requirements for stationary sources of air pollution (not including indirect sources) under 40 CFR 51.18 and Section 129 of the Clean Air Act Amendments of 1977, Pub. L. 95-95, (note under 42 U.S.C. § 7502). A major new source or modification which would contribute to a violation of a national ambient air quality standard (NAAQS) may be allowed to construct only if the stringent conditions set forth below are 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 NAAQS.

For each area designated as exceeding an NAAQS (nonattainment area) under 40 CFR 81.300 *et seq.*, this Interpretative Ruling will be superseded after June 30, 1979—(a) by preconstruction review provisions of the revised SIP, if the SIP meets the requirements of Part D, Title 1, of the Act; or (b) by a prohibition on construction under the applicable SIP and Section 110(a)(2)(I) of the Act, if the SIP does not meet the requirements of Part D. The Ruling will remain in effect to the extent not superseded under the Act. This prohibition on major new source construction does not apply to a source whose permit to construct was applied for during a period when the SIP was in compliance with Part D, or before the deadline for having a revised SIP in effect that satisfies Part D.

II. INITIAL SCREENING ANAYLSES AND DETERMINATION OF APPLICABLE REQUIREMENTS

A. *Definitions.* For purposes of this Ruling:

1. "Source" Means any structure, building, facility, equipment, installation or operation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control).

2. "Facility" means an identifiable piece or process equipment. A stationary source is composed of one or more pollutant-emitting facilities.

3. "Potential" to emit means the maximum capacity to emit a pollutant absent air pollution control equipment. "Air pollution control equipment" includes control equipment which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation. Annual potential shall be based on the maximum annual rated capacity of the source, unless the source is subject to enforceable permit conditions which limit the operating rate or hours of operation, or both. Enforceable permit conditions on the type or amount of materials combusted or processed may be used in determining the potential emission rate of a source.

4. "Major source" means any source for which the potential emission rate is equal to or greater than 100 tons per year of any of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, or carbon monoxide.

5. "Major modification" means any physical change in, change in the method of operation of, or addition to a stationary source which increases the potential emission rate of any air pollutant specified in Section A.4. above (including any not previously emitted and taking into account all accumulated increases in potential emissions occurring at the source since February 16, 1979, or since the time of the last construction approval issued for the source pursuant to this Ruling, whichever time is more recent, and regardless of any emission reductions achieved eleswhere in the source) by 100 tons per year or more.

(i) A physical change shall not include routine maintenance, repair, and replacement.

(ii) A change in the method of operation, unless previously limited by enforceable permit conditions, shall not include:

(a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(b) An increase in the hours of operation;

(c) Use of an alternative fuel or raw material, if on December 21, 1976, the source was capable of accommodating such fuel or material;

(d) Use of an alternative fuel or raw material by reason of an order in effect under Sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act;

(e) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

(f) Change in ownership of a source; or

(g) Use of refuse derived fuel generated from municipal solid waste.

6. "Allowable emissions" means the emission rate calculated using the maximum rated capacity of the source (unless the source is subject to enforceable permit conditions which limit operating rate, or hours of operation, or both) and the most stringent of the following:

(i) Applicable new source performance standards or standards for hazardous pollutants set forth in 40 CFR Part 60 or 61;

(ii) Applicable SIP emission limitation; or

(iii) The emission rate specified as an enforceable permit condition.

7. "Lowest achievable emission rate" means, for any source, that rate of emissions based on the following, whichever is more stringent:

(i) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(ii) The most stringent emission limitation which is achieved in practice by such class or category of source.

This term, applied to a modification, means the lowest achievable emission rate for the new or modified facilities within the source. In no event shall the application of this term permit a proposed new or modified facility to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

8. "Fugitive dust" means particulate emissions composed of soil which is uncontaminated by pollutants resulting from industrial activity. Fugitive dust may include emissions from haul roads, wind erosion of exposed soil surfaces and soil storage piles and other activities in which soil is either removed, stored, transported, or redistributed.

9. "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new components exceed 50 percent of the fixed capital cost of a comparable entirely new facility. However, any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of 40 CFR 60.15(f)(1)-(3). A reconstructed facility will be treated as a new facility for purposes of this Ruling, except that use of an alternative fuel or raw material by reason of an order in effect under Sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, or by reason of an order or rule under Section 125 of the Act, shall not be considered reconstruction.

In determining LAER for a reconstructed source, the provisions of 40 CFR 60.15(f)(4) shall be taken into account in assessing whether a new source performance standard is applicable to such source.

10. "Fixed capital cost" means the capital needed to provide all the depreciable components.

11. "Secondary emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a major source or major modification, but do not come from the source itself. For purposes of this Ruling, secondary emissions must be specific and well defined, must be quantifiable, and must impact the same general nonattainment area as the major source which causes the secondary emission. Secondary emissions may include, but are not limited to:

a. Emissions from ships or trains coming to or from a refinery, terminal facility, etc.

b. Emissions from off-site support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a major source.

12. "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 50% of the heat input to be considered a resource recovery facility under this Ruling.

B. *Review of all sources for emission limitation compliance.* The reviewing authority must examine each proposed major new source and proposed major modification [1] to determine if such a source will meet all applicable emission requirements in the SIP, any applicable new source performance standard in 40 CFR Part 60, or any national emission standard for hazardous air pollutants in 40 CFR Part 61. If the reviewing authority determines that the proposed major new source cannot meet the applicable emission requirements, the permit to construct must be denied.

C. *Review of specified sources for air quality impact.* In addition, for each proposed major new source with allowable emissions exceeding 50 tons per year, 1000 pounds per day, or 100 pounds per hour, whichever is most restrictive, the reviewing authority must determine if the source will cause or contribute to a violation of an NAAQS.[2] A proposed source which would not exceed any of the above emission levels needs no further analysis under this ruling, provided such a source meets the requirements of Section II. B.

Where a source is constructed or modified in increments which individually do not emit more than the above amounts and the increments have not been offset in accordance with this Ruling, the allowable emissions from all such increments granted a permit to construct after December 21, 1976, shall be added together and this Ruling may be applicable when a proposed increment would cause the sum of the allowable emissions which have not been offset to equal or exceed 50 tons per year, 1000 pounds per day, or 100 pounds per hour. If the total modification would cause or contribute to a violation of the NAAQS, all of the provisions of this Ruling are then applicable to each increment. If any of the increments has not previously been subject to Condition 1 of Section IV.A. (requiring the source to meet the lowest achievable emission rate), such determination must consider the stage of construction of such increment and the ability of the source to install additional control equipment.

For "stable" air pollutants (i.e., SO_2, particulate matter and CO), the determination of whether a source will cause or contribute to a violation of an NAAQS generally should be made on a case-by-case basis as of the proposed new source's start-up date using the source's allowable emissions in an atmospheric simulation model (unless a source will clearly impact on a receptor which exceeds an NAAQS).

For sources of nitrogen oxides, the initial determination of whether a source would cause or contribute to a violation of the NAAQS for NO_2 should be made using an atmospheric simulation model assuming all the nitric 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 photochemical oxidants, sources of volatile organic compounds (VOC) locating in areas designated under 40 CFR 81.300 *et seq.* as nonattainment for photochemical oxidant or otherwise shown to be in violation of the NAAQS for oxidant shall be subject to the provisions of Section IV of this Ruling. In addition, VOC sources locating within 36 hours travel time (under wind conditions associated with concentrations exceeding the NAAQS for oxidants) of a nonattainment monitor shall also be subject to Section IV of this Ruling. However, a VOC source may be exempt from these requirements if the source owner can demonstrate that the emissions from the proposed source will have virtually no effect upon any area that exceeds the NAAQS for photochemical oxidant. This exemption is only intended for remote rural sources whose emissions would be very unlikely to interact with other significant sources of VOC or NO_x to form additional oxidant.[3]

As noted above, the determination as to whether a source would cause or contribute to a violation of an NAAQS should be made as of the new source's start-up date. Therefore, if a designated nonattainment area is projected to be an attainment area as part of an approved SIP control strategy by the new source start-up date, offsets would not be required if the new source would not cause a new violation.

D. *Sources locating in a "clean" portion of a designated nonattainment area.* A source locating in a clean portion (or which will be clean as of the new source start-up date) of a nonattainment area designated pursuant to Section 107 of the Act may be exempt from the requirements of this ruling if the allowable emissions from the source or facility (not including any emission reductions achieved elsewhere in the source) would not cause the following significance levels to be exceeded in the *actual* area of non-attainment (as of the new source start-up date):

Pollutant	Averaging Time				
	Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO_2	1.0 μg/m³	5 μg/m³		25 μg/m³	
TSP	1.0 μg/m³	5 μg/m³			
NO_2	1.0 μg/m³				
CO			0.5 mg/m³		2 mg/m³

No significance increments are applicable for hydrocarbons or photochemical oxidants. If the source would exceed the significance levels in the portion of the designated nonattainment area where the NAAQS is actually violated (actual area of nonattainment), all requirements of this Ruling (except Condition 3 of Section IV.A.) would be applicable.

It will be assumed as the starting point in reviewing a permit application that every locality in a designated nonattainment area will exceed the NAAQS (as of the new source start-up date), and that any major source locating in the area will significantly contribute to the violation. However, if the applicant or any other participant presents a substantial and relevant argument (including any necessary analysis or other demonstration) why that assumption is incorrect, then the applicability of this Ruling would be determined by the specific facts in the case.

E. *Sources in attainment or unclassifiable areas.* For areas designated under 40 CFR 81.300 *et. seq.* as attainment or unclassifiable for the NAAQS, sources locating in such areas which would exceed the above significance increments at any locality that does not meet the NAAQS are subject to this Ruling. However, such a source may be exempted from Condition 3 of Section IV.A. of this Ruling.

F. *Fugitive dust sources.*[3] Fugitive dust associated with major sources locating in clean portions of designated nonattainment areas or in designated attainment or unclassifiable areas shall be subject only to applicable requirements for preventing significant deterioration of air quality (see 40 CFR 52.21). Fugitive dust associated with major sources locating in an actual area of nonattainment shall be subject to Conditions 1, 2 and 3 of Section IV.A. of this Ruling.

G. *Secondary emissions.* Secondary emissions need not be considered in determining whether the emission rates in Section II.C. above would be exceeded. However, if a

[1] Hereafter the term "source" will be used to denote both any source and any modification.

[2] Required only for those pollutants for which the increased allowable emissions exceed 50 tons per year, 1000 pounds per day, or 100 pounds per hour, although the reviewing authority may address other pollutants if deemed appropriate. The preceding hourly and daily rates shall apply only with respect to a pollutant for which a national ambient air quality standard, for a period less than 24-hours or for a 24-hour period, as appropriate, has been established.

[3] The discussion in this paragraph is a proposal, but represents EPA's interim policy until final rulemaking is completed.

source is subject to this Ruling on the basis of the direct emissions from the source, the applicable conditions of this Ruling must also be met for secondary emissions. However, if the secondary emissions are not under the control of the applicant, such secondary emissions may be exempt from Conditions 1 and 2 of Section IV. Also, since EPA's authority to perform or require indirect source review relating to mobile sources regulated under Title II of the Act (motor vehicles and aircraft) has been restricted by statute, consideration of the indirect impacts of motor vehicles and aircraft traffic is not required under this Ruling.

III. Sources Locating in "Clean Areas", but Would Cause a New Violation of an NAAQS

If the reviewing authority finds that the emissions from a proposed source would cause a new violation of an NAAQS, but would not contribute to 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 Section V below.

IV. Sources That Would Contribute to Concentrations Which Exceed an NAAQS

A. *Conditions for approval.* If the reviewing authority finds that the emissions from a proposed source would contribute to concentrations which exceed an NAAQS as of the source's proposed start-up date, approval may be granted only if the following conditions are met:

Condition 1. The new source is required to meet an emission Limitation [4] which specifies the lowest achievable emission rate for such source.[5]

Condition 2. The applicant must certify that all existing major sources [5] owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the appplicant) in the same State as the proposed source are in compliance with all applicable emission limitations and standards under the Act (or are in compliance with an expeditious schedule which is Federally enforceable or contained in a court decree).

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 there will be reasonable progress toward attainment of the applicable NAAQs.[5] 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 Section IV.D. below). [5] Atmospheric simulation modeling is not necessary for volatile organic compounds and NO_x. Fulfillment of Condition 3 and Section IV.D. will be considered adequate to meet this condition.

B. *Exemptions from certain conditions.* The reviewing authority may exempt the following sources from Condition 1 under Section III or Conditions 3 and 4. Section IV.A.: (i) Resource recovery facilities burning municipal solid waste, and (ii) sources which must switch fuels due to lack of adequate fuel supplies or where a source is required to be modified as a result of EPA regulations (e.g., lead-in-fuel requirements) and no exemption from such regulation is available to the source. Such an exemption may be granted only if:

1. The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Condition 1 under Section III or Conditions 3 and 4 under Section IV.A. and that such efforts were unsuccessful;

2. The applicant has secured all available emission offsets; and

3. 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.

Temporary emission sources, such as pilot plants, portable facilities which will be relocated outside of the nonattainment area after a short period of time, and emissions resulting from the construction phase of a new source, are exempt from Conditions 3 and 4 of this Section.

C. *Baseline for determining credit for emission and air quality offsets.* 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. 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 or allowed 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. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offsets should be calculated using the actual annual operating hours for the previous one or two year period (or other appropriate period if warranted by cyclical business conditions). Where the SIP requires certain hardware controls in lieu of an emission limitation (e.g., floating roof tanks for petroleum storage), baseline allowable emissions should be based on actual operating conditions for the previous one or two year period (i.e., actual throughput and vapor pressures) in conjunction with the required hardware controls.

1. *No meaningful or 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 determined in accordance with the discussion above regarding operating conditions.

Where the SIP emission limit allows greater emissions than the potential emission rate of the source (as when a State has a single particulate emission limit for all fuels), emission offset credit will be allowed only for control below the potential emission rate.

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 not acceptable unless the permit is 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.

3. *Operating hours and source shutdown.* A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels (see initial discussion to this Section C) 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 in the case for all emission offset situations.[6]

4. *Credit for hydrocarbon substitution.* As set forth in the Agency's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977), EPA has found that almost all non-methane hydrocarbons are photochemically reactive and that low reactivity hydrocarbons even-

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[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 limitation" shall also include such design, operational, or equipment standards.

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

[6] 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 August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.

tually 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, except for those compounds listed in Table 1 of the above policy statement.

5. *"Banking" of emission offset credit.* For new sources obtaining permits by applying offsets after January 16, 1979, the reviewing authority may allow offsets that exceed the requirements of reasonable progress toward attainment (Condition 3) to be "banked" (i.e., saved to provide offsets for a source seeking a permit in the future) for use under this Ruling. Likewise, the reviewing authority may allow the owner of an existing source that reduces its own emissions to bank any resulting reductions beyond those required by the SIP for use under this Ruling, even if none of the offsets are applied immediately to a new source permit. A reviewing authority may allow these banked offsets to be used under the preconstruction review program required by Part D, as long as these banked emissions are identified and accounted for in the SIP control strategy. A reviewing authority may not approve the construction of a source using banked offsets if the new source would interfere with the SIP control strategy or if such use would violate any other condition set forth for use of offsets. To preserve banked offsets, the reviewing authority should identify them in either a SIP revision or a permit, and establish rules as to how and when they may be used.

D. *Location of offsetting emissions.* In the case of emission offsets involving volatile organic compounds (VOC), the offsets may be obtained from sources located anywhere in the broad vicinity of the proposed new source. Generally, offsets will be acceptable if obtained from within the same AQCR as the new source or from other areas which may be contributing to the oxidant problem at the proposed new source location. As with other pollutants, it is desirable to obtain offsets from sources located as close to the proposed new source site as possible. If the proposed offsets would be from sources located at greater distances from the new source, the reviewing authority should increase the ratio of the required offsets and require a showing that nearby offsets were investigated and reasonable alternatives were not available.[3]

Offsets for NO_x sources may also be obtained within the broad area of nonattainment. This is because areawide 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. Since the air quality impact of SO_2, particulate and carbon monoxide sources is site dependent, simple areawide mass emission offsets are not appropriate. For these pollutants, the reviewing authority should consider 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 of Section 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. The reviewing authority may perform this analysis or require the applicant to submit appropriate modeling results.

E. *Reasonable progress towards attainment.* As long as the emission offset is greater than one-for-one, and the other criteria set 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 Section IV.A. above. This does not apply to "reasonable further progress" as required by Section 173.

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. If emission reductions are to be obtained in a State that neighbors the State in which the new source is to be located, the emission reductions committed to must be enforceable by the neighboring State and/or local agencies and under the Clean Air Act. Where the new facility is a replacement for a facility that is being shut down in order to provide the necessary offsets, the reviewing authority may allow up to 180 days for shakedown of the new facility before the existing facility is required to cease operation.

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.[7] An external emission offset will not be enforceable unless the affected source(s) providing the emission reductions 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) providing the emission reductions 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 mechanism available to the State that is enforceable under the Clean Air Act. 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 uncertainity 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 (including mobile 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.

VI. POLICY WHERE ATTAINMENT DATES HAVE NOT PASSED

In some cases, the dates for attainment of primary standards specified in the SIP under Section 110 have not yet passed due to a delay in the promulgation of a plan under this section of the Act. In addition the Act provides more flexibility with respect to the dates for attainment of secondary NAAQS than for primary standards. Rather than setting specific deadlines, Section 110 requires secondary NAAQS to be achieved within a "reasonable time". Therefore, in some cases, the date for attainment of secondary standards specified in the SIP under Section 110 may also not yet have passed. In such cases, a new source which would cause or contribute to an NAAQS violation may be exempt from the Conditions of Section IV.A. so long as the new source meets the applicable SIP emission limitations and will not interfere with the attainment date specified in the SIP under Section 110 of the Act.

(Sec. 129(a), Pub. L. 95-95 (note under 42 U.S.C. 7502), and Sec. 301 of the Clean Air Act, as amended (42 U.S.C. 7601).)

[FR Doc. 79-1423 Filed 1-15-79; 8:45 am]

[7] 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 limitation.

[6560-01-M]

[FRL 1031-3]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for U.S. Air Force 928th Tactical Airlift Group

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: By this rule the Administrator of U.S. EPA issues a Delayed Compliance Order to the U.S. Air Force 928th Tactical Airlift Group (Air Force). The Order requires the Air Force to bring air emissions from its building 1 Heating Plant, Chicago, Illinois, into compliance with certain regulations contained in the federally approved Illinois State Implementation Plan (SIP). The Air Force's com-

pliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order.

DATE: This rule takes effect on January 16, 1979.

FOR FURTHER INFORMATION CONTACT:

Louise Gross, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: On September 12, 1978, the Acting Regional Administrator of U.S. EPA's Region V Office published in the FEDERAL REGISTER (43 FR 40539) a notice setting out the provisions of a proposed Federal Delayed Compliance Order for the Air Force. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is issued to the Air Force by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The Order places the Air Force on a schedule to bring its Building 1 Heating Plant at Chicago, Illinois, into compliance as expeditiously as practicable with Illinois Pollution Control Board Rule 203, a part of the federally approved Illinois State Implementation Plan. The Air Force is unable to immediately comply with this regulation. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit the Air Force to delay compliance with the SIP regulation covered by the Order until July 1, 1979.

Compliance with the Order by the Air Force will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulation covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulation covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that the Air Force is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final agency action for the purpose of judicial review under Section 307(b) of the Act. U.S. EPA has determined that the Order shall be effective January 16, 1979 because of the need to immediately place the Air Force on a schedule for compliance with the Illinois State implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: January 8, 1979.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. By adding an entry to the table in § 65.180 to read as follows:

§ 65.180 Federal delayed compliance orders issued under Section 113(d)(1), (3), and (4) of the Act.

* * * * * * *

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
U.S. Air Force 928th Tactical Airlift Group.	Chicago, Ill.....	EPA-5-79-A-13...	Sept. 12, 1978	Rule 203.....	July 1, 1979

[FR Doc. 79-1425 Filed 1-15-79; 8:45 am]

[6560-01-M]

[FRL 1031-4]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for Owensboro Municipal Utilities, Owensboro, Ky.

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: The Administrator of EPA hereby issues a Delayed Compliance Order to Owensboro Municipal Utilities (OMU). The Order requires the company to bring air emissions from its Elmer Smith facility in Owensboro, Kentucky, into compliance with certain regulations contained in the federally-approved Kentucky State Implementation Plan (SIP). OMU's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on January 16, 1979.

FOR FURTHER INFORMATION CONTACT:

Richard S. DuBose, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30308, telephone number: (404) 881-4298.

ADDRESSES: The Delayed Compliance Order, supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing issuance of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air Enforcement Branch, 345 Courtland Street, NE., Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: On September 27, 1978, the Regional Administrator of EPA's Region IV Office published in the FEDERAL REGISTER, 43 FR 43738 (1978), a notice setting out the provisions of a proposed delayed compliance order for OMU. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments or requests for a public hearing were received in response to the proposal notice.

Therefore, a delayed compliance order effective this date is issued to the Elmer Smith facility of Owensboro Municipal Utilities by the Administrator of EPA pursuant to the authority of Section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The Order places OMU on a schedule to bring its coal-fired steam generating units at its Elmer Smith facility in Owensboro, Kentucky, into compliance as expeditiously as practicable with Kentucky Air Pollution Control Regulation 401 KAR 3:060 Section 3(3)(e), a part of the federally-approved Kentucky State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the