

and to provide areas for use by the Inaugural Committee for Inaugural activities. The regulation sets aside the entire White House Sidewalk and Lafayette Park except for approximately the northeast quadrant for the exclusive use of the Inaugural Committee for Inaugural activities. Access to this area will be controlled by the Inaugural Committee pursuant to a reserved ticket system. Approximately the northeast quadrant of Lafayette Park and other park areas in the White House area and elsewhere are left available for demonstration activities. Permits for use of the areas will be granted under the National Park Service's regular demonstration permit system as set forth in 36 CFR 50.19. In accord with that system, permits will be granted on a first-come-first-served basis.

There are legitimate government interests in devoting the front of the White House to Inaugural ceremonies on this one special day every four years and these interests cannot be successfully furthered if individuals are entitled to be admitted for demonstration or other purposes unrelated to the Inauguration. Moreover, the regulation narrowly restricts the area necessary to further the legitimate government interests while providing ready access to the immediately adjacent and other nearby areas for demonstration conduct.

Impact Analysis: The National Park Service has determined that this document is not a significant rule requiring preparation of a regulatory analysis under Executive Order 12044 and Part 14 of Title 43 of the Code of Federal Regulations.

Public Participation

It is the policy of the National Park Service, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding these interim regulations to the address noted at the beginning of this rulemaking.

Authority: Sec. 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. § 3); 245 DM I (44 FR 23384); Act of Aug. 6, 1956 (70 Stat. 1049) as amended Act of Jan. 30, 1968 (82 Stat. 4); D.C. Code Ann. § 8-108 (1973); and National Park Service Order No. 77 (38 FR 7478), as amended.

Russell E. Dickenson,
Director, National Park Service.

Approved: December 18, 1980.

In consideration of the foregoing, § 50.19 of Title 36 of the Code of Federal Regulations is accordingly amended by

adding a new subparagraph 50.19(d)(1)(vii) as follows:

§ 50.19 Demonstrations and special events.

- * * * * *
- (d) * * *
- (1) * * *
- (vii) *Inaugural Ceremonies.* The White House Sidewalk and Lafayette Park, exclusive of the northeast quadrant, for the exclusive use of the Inaugural Committee on January 20, 1981.

[FR Doc. 80-40129 Filed 12-23-80; 8:45 am]
BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL 1711-4]

Grants for Construction of Treatment Works; Clean Water Act

AGENCY: Environmental Protection Agency.

ACTION: Deviation to Rule.

SUMMARY: Under the authority of 40 CFR 30.1000, the Environmental Protection Agency (EPA) has issued a class deviation from 40 CFR 35.930-5(b) of EPA's construction grant regulations. We are publishing the class deviation as part of this document.

Section 35.930-5(b) states in part that to receive 85 percent funding any innovative/alternative work must be Step 2, Step 3 or Step 2+3 work.

EPA believes that goals of the construction grant program can be furthered through the consideration of innovative and alternative concepts during the Step 1 facility planning phase. This class deviation allows 85 percent funding for Step 1 facility planning when innovative or alternative concepts are incorporated into the facility plan.

EPA regional offices will determine which facility plan activities will receive the 85 percent funding. Selected activities must fully meet the criteria contained in Part 35 Appendix E for innovative and alternative technology.

Activities which do not fully meet the criteria in Appendix E for innovative and alternative technology are not covered in this deviation. The EPA Regional Offices will review these activities on a case-by-case basis, and if they believe 85 percent innovative and alternative funding is appropriate, the Regional Offices can request the Director, Grants Administration Division to approve a project specific deviation from 40 CFR 35.930-5(b).

EFFECTIVE DATE: December 16, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. Harvey Pippen, Jr., Director, Grants Administration Division (PM-216), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-0850.

C. William Carter,

Acting Assistant Administrator for Planning and Management (PM-208).

December 16, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management (WH-556).

December 8, 1980.

United States Environmental Protection Agency

Date: December 16, 1980.

Subject: Class Deviation from 40 CFR 35.930-5(b).

From Harvey Pippen, Jr., Director, Grants Administration Division (PM-216).
To: Regional Administrators.

This is in response to Henry Longest's September 8, 1980, request for a class deviation from 40 CFR 35.930-5(b) "innovative and alternative technology." This regulation states that to receive 85 percent innovative/alternative (I/A) funding the work must be Step 2, Step 3, or Step 2+3 work. Mr. Longest requested a class deviation to extend the 85 percent I/A funding available under section 202(a)(2) of the Clean Water Act to those portions of Step 1 facility planning which fully meet the definitions and criteria in 40 CFR Part 35 Appendix E. Mr. Longest requested this class deviation to facilitate the implementation of a Program Operation Memorandum promoting the expanded use of Step 1 facility planning funds to encourage grantees to consider a broader range of options for wastewater treatment facilities.

Allowing the use of I/A set-aside funds for the study of I/A alternatives during facility planning will:

- (1) Promote cost-effective and environmentally sound solutions to municipal wastewater treatment-related problems.
- (2) Promote cost-effective solutions to broader environmental problems in conjunction with municipal point source pollution abatement.
- (3) Enhance facility planning and lead to higher quality project planning.
- (4) Address a wide range of significant secondary impacts arising from the construction and operation of public owned treatment works.

I am approving a class deviation from 40 CFR 35.930-5(b) to allow EPA Regional Offices to provide additional 10 percent funding, by way of grant amendment, for completed portions of Step 1 work which fully satisfy the innovative and alternative technology guidelines contained in Appendix E to 40 CFR Part 35. If the innovative or alternative work does not meet the criteria specified in Appendix E, the Region may request a deviation on a case-by-case basis.

Dated: December 16, 1980.

Concur:

C. William Carter,

Acting Assistant Administrator for Planning and Management (PM-208).

Dated: December 8, 1980.

Concur:

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management (WH-556).

[FR Doc. 80-40302 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-29-M

40 CFR Part 52

[A 4 FRL 1708-6]

Approval and Promulgation of Implementation Plans; Kentucky: Conditional Approval of Kentucky's Particulate Part D Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: EPA today announces conditional approval of Kentucky's total suspended particulate (TSP) nonattainment (Part D) plan revisions. The revisions submitted by the Commonwealth contain minor deficiencies which Kentucky has agreed to correct by October 15, 1981. Correction of the deficiencies will not require extensive time or resources from the Commonwealth. The time period allowed for making the corrections is necessary since the Commonwealth's legislature must adopt certain rules before the deficiencies can be corrected. If the deficiencies are not corrected by October 15, 1981, EPA will disapprove the applicable portions of the revisions.

This notice responds to comments received pursuant to EPA's November 15, 1979 proposal notice (44 FR 65781), and EPA's September 18, 1980 reproposal and reopening of comment period notice (45 FR 62163). Comments received in response to the November 15, 1979 notice (44 FR 65781), and EPA responses to those comments as stated in 45 FR 62163, September 18, 1980, will not be repeated in this notice if a commenter references or repeats a previous comment, and EPA's position regarding its previous response has not changed. If a commenter references a previous comment and offers additional comment on the same issue, then EPA's previous response will be referenced and additional information will be offered, as necessary. Any comment not previously addressed by EPA will be fully responded to in this notice.

EFFECTIVE DATE: December 24, 1980.

ADDRESSES: Copies of the materials submitted by Kentucky and the

comments received in response to the proposal notices of November 15, 1979 (44 FR 65781) and September 18, 1980 (45 FR 62163) may be examined during normal business hours at the following locations:

Public Information Reference Unit,

Library Systems Branch,

Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Library, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT:

Melvin Russell of EPA Region IV's Air Programs Branch at the Region IV address above, or call (404) 881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION:

Background

EPA proposed conditional approval of Kentucky's TSP Part D State Implementation Plan (SIP) revisions in the November 15, 1979, *Federal Register*, (44 FR 65781). Extensive comments were received in response to the November 15, 1979 notice. After reviewing the comments along with the material submitted by Kentucky, EPA presented its position in the September 18, 1980 *Federal Register*, (45 FR 62163). Reproposal and Reopening of Comment Period for Kentucky's Particulate Part D Plan Revisions. In the September 18, 1980 notice EPA: (1) Responded to comments received in response to the November 15, 1979 notice, that relate directly to deficiencies found to exist in Kentucky's TSP plan revisions. (2) Clarified those deficiencies noted in the November 15, 1979 notice. (3) Described additional deficiencies discovered in the Kentucky revisions after publication of the November 15, 1979 notice.

EPA is taking final action to conditionally approve certain elements of Kentucky's plan. A discussion of conditional approval and its practical effect appears in a supplement to the General Preamble, 44 FR 38583 (July 2, 1979). The conditional approval requires the State to submit additional materials by the deadline specified in today's notice. There will be no extension of the conditional approval deadline which is being promulgated today. EPA will follow the procedures described below when determining if the State has satisfied the conditions.

1. If the State submits the required additional documentation according to schedule, EPA will publish a notice in the *Federal Register* announcing receipt of the material. The notice of receipt will also announce that the conditional

approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the State's submission to determine if the condition is fully met. After review is complete, a *Federal Register* notice will be published proposing or taking final action either to find the condition has been met and approved the plan, or to find the condition has not been met, withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the State fails to submit in a timely manner the required materials needed to meet a condition, EPA will publish a *Federal Register* notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and Section 110 (a)(2)(I) restrictions on growth are in effect.

Discussion

The following comments and EPA responses relate to the November 15, 1979 *Federal Register* proposal (44 FR 65781) and the September 18, 1980 *Federal Register* reproposal (45 FR 62163), and are addressed in the manner described above in the SUMMARY section.

1. Comment: Several commenters argued that EPA's policy of conditional approval is not sanctioned by the Clean Air Act and is not a legally effective procedure for lifting the construction moratorium imposed under Section 110(a)(2)(I). The commenters believe that EPA must promulgate a Federal SIP and comply with procedural requirements for such promulgation if the Administrator finds a state plan inadequate. The commenters also claim that conditional approval circumvents the procedural safeguards of Section 307 of the Act and coerces state modification of the plan through threat of disapproval.

EPA Response: A discussion of conditional approval and its practical effect appears in supplements to the April 4, 1979 General Preamble (44 FR 20372) published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), and November 23, 1979 (44 FR 67182).

The Administrator believes that he has inherent authority under the CAA to condition approval of a SIP upon a State's agreement to correct minor deficiencies expeditiously, and that conditional approval is a reasonable approach to the complicated process of plan development which is consistent with the intent of Congress, with the language of the Act and with the Administrator's obligations thereunder.

The Act and existing SIPs provide for a moratorium on construction of major new sources of pollution if a revised plan which satisfies the requirement of Part D is not in effect by July 1, 1979. The purpose of the moratorium on new sources is not to punish a state for failure to control pollution, but rather to prevent the problem from getting worse. The moratorium would postpone construction that would worsen a violation of a national standard until after an acceptable plan is in effect that assures timely attainment of the standard. Where a plan has been revised so as to be in substantial compliance with the requirements of Part D, and the state provides assurances that any remaining deficiencies will be remedied within a short period, imposition of the moratorium on new sources during that period would not serve the Congressional purpose. Therefore, under such circumstances EPA interprets the Act to permit the plan to be conditionally approved as satisfying Part D requirements.

When a state submits a SIP containing minor deficiencies, and the state provides assurances that it will submit corrections on a specified schedule, EPA will conditionally approve the plan. A conditional approval will mean that the moratorium on new sources will not apply unless the state fails to submit corrections by the specified date, or unless the corrections are ultimately determined to be inadequate. Conditional approval is not granted without strong assurance by the appropriate state officials that the deficiencies will be corrected on schedule.

Conditional approval is also consistent with the Administrator's obligation under Section 110(c)(1)(C). That subsection requires the Administrator to promulgate regulations for a state if "the state fails, within 60 days after notification by the Administrator or such later period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H)." When the Administrator proposes conditional approval, he is essentially notifying the state that further revisions are required to make the plan or regulations fully approvable. If the state fails to satisfy the Administrator's conditions, the Administrator will disapprove the plan or regulations and may then promulgate regulations to correct the deficiency. The state is simply offered the option of correcting the inadequacies itself.

Conditional approval also provides procedural safeguards equivalent to those available when the Administrator promulgates a plan. In the case of Kentucky, for example, the Administrator has proposed to conditionally approve certain provisions. The commenters have had an opportunity to submit extensive written comments and receive EPA's response. This final conditional approval may be challenged in the appropriate United States Court of Appeals within 60 days of the publishing of such conditional approval. The rulemaking and judicial review procedures thus provide opportunities for comment and review similar to those provided for promulgation under Section 307(d).

2. Comment: Commenters questioned what rules are in effect if a plan or regulation is conditionally approved.

EPA Response: EPA intends that the conditionally approved requirements be effective unless the conditional approval is withdrawn for failure to meet the conditions. As noted in the General Preamble, 44 FR 20373-30374, April 4, 1979: "The new requirement does not supersede or replace the old requirement until the source comes into compliance with the new requirement. Instead, the existing requirement must remain an enforceable provision of the SIP, and must co-exist with the new requirement in the applicable implementation plan. The present emission control requirement must be retained because the source must be prevented from operating without controls (or with less stringent controls) while it is moving toward compliance with (or challenging) the new requirement."

3. Comment: Commenters argue that sources are prejudiced by the results in 2 above, since they are required to comply with rules that may be significantly altered.

EPA Response: Because conditional approval is applicable only to plans or regulations with relatively minor deficiencies, it is highly improbable that conditionally approved provisions will be substantially changed. In addition, notices of proposed and final conditional approval, such as today's final action, provide adequate notice to sources of the requirements they will ultimately have to meet if the conditions are met.

4. Comment: Several commenters took issue with EPA's interpretation of reasonably available control technology (RACT), its technical applicability and the legal grounds for enforcing the technical standards.

EPA Response: EPA responded to comments regarding RACT in the September 18, 1980 Federal Register (45 FR 62163), in Part A, sections 1, 2, 3. Therein EPA explained at length its legal and technical position regarding the application of RACT to TSP sources affected by Kentucky's nonattainment plan revisions. EPA here references those responses, as its position regarding this issue has not changed.

5. Comment: Several commenters disagree with EPA's position regarding Kentucky Regulation 401 KAR 61:005, as it applies to performance testing for demonstration of compliance purposes. The commenters contend that it should be the state's discretion to determine if performance testing is necessary.

EPA Response: EPA maintains that a performance test should be required for demonstration of compliance. The state may exercise some discretion in determining when and for which sources the demonstration is to occur, but the means of demonstration should be a performance test. The performance test is the only certain method of demonstrating compliance under operating conditions.

6. Comment: One commenter contends that Kentucky Regulation 401 KAR 50:055 Section 6, Alternative Emission Reduction Plans, should not be required to contain a provision for public hearing, since any proposals submitted pursuant to this section must be submitted as a SIP revision, and Kentucky regulations already require public hearing procedures for all SIP revisions.

EPA Response: EPA does require that all alternative Emission Reduction Plans be submitted to EPA as SIP revisions; however, 401 KAR 50:055, Section 6, does not indicate that this rule will apply. If Section 6 is amended to clearly state that all alternative emission reduction plans will be submitted to EPA as SIP revisions, then the requirement for public hearing will be inherently met.

7. Comment: Several commenters specifically take issue with EPA's position regarding control of intermittent emissions from various iron and steel making processes.

EPA Response: EPA responded to these commenters at length in the September 18, 1980 Federal Register (45 FR 62163); Responses number 3 and 5 and Deficiencies number 6, 7, and 8. EPA here references those responses and deficiencies, as its position regarding this issue has not changed.

8. Comment: One commenter believed that EPA was repromulgating the designation of the City of Newport as nonattainment for TSP, and sought to challenge that designation.

EPA Response: The area was designated nonattainment on March 3, 1978 in the Federal Register beginning on page 8962. The Federal Register noted that even though the designations were immediately effective, EPA solicited comments for 60 days and stated that EPA would republish revised designations as appropriate. The names and addresses of EPA personnel were included in order that comments on specific State designations could be directed to the appropriate EPA Regional Offices. The nonattainment designation of the City of Newport, Campbell County, Kentucky, was finalized on September 11, 1978, 43 FR 40412 at page 40425. Since the commenter was incorrect in his belief that EPA was repromulgating the designation in the November 15, 1979 notice, any challenges to that original designation are both untimely and outside the scope of this rulemaking proceeding.

9. Comment: One commenter stated that the requirement for RACT on stationary sources in the City of Newport is unwarranted and would be of insignificant benefit since the TSP nonattainment problem is due to rural fugitive dust.

EPA Response: Fugitive dust, in an industrialized area such as Newport, cannot be considered "rural" fugitive dust. Windblown dust, in this and similar situations is contaminated by the various components which reflect the industrial make-up and transportation activities in the area, and hence, may adversely affect health. The implementation of RACT on stationary sources is necessary to comply with the requirements of Section 172(a), 172(b)(2) and 172(b)(3) of the Clean Air Act.

10. Comment: One commenter took issue with EPA's proposal to disapprove Kentucky Regulation 401 KAR 61:015. In the September 18, 1980 Federal Register, 45 FR 62163 at page 62169, EPA proposed to disapprove Section 8(2)(d) of the regulation regarding Existing Indirect Heat Exchangers, because Section 8(2)(d) of the regulation allows sources which are not subject to more strict emission limits, as a result of Kentucky's 1979 revisions, an extension of time (until 1982) to achieve compliance. The commenter contends that it is within Kentucky's discretion to extend the final compliance dates to December 31, 1982, and that it is not within EPA's authority to disapprove this portion of the regulation. This comment was also submitted in response to the November 15, 1979 Federal Register, (45 FR 65781).

EPA Response: EPA responded to this issue in the September 18, 1980 Federal

Register, (45 FR 62163 at pages 62167, Response number 6, and 62169, Deficiency number 10). EPA here references that response and deficiency, as its position regarding this issue has not changed.

11. Comment: One commenter requested clarification of EPA's recommendations regarding Kentucky regulation 401 KAR 61:080, Steel Plants Using Existing Basic Oxygen Process Furnaces (BOF). In the September 18, 1980 Federal Register (45 FR 62163 at page 62169, EPA stated its belief that available information supports a standard for BOF shops which would restrict the opacity of emissions discharged from BOF shops, excluding discharges from control devices, to less than 20 percent opacity except for either three minutes in any consecutive 60 minute period of time or on a three minute moving average. The commenter requested clarification of whether the three minutes are consecutive or additive, and what is meant by "a three minute moving average."

EPA Response: (1) The three minutes in any consecutive 60 minute period are the result of additive fifteen second readings, therefore if any 60 minute sampling period reveals a total of 12 or more fifteen second periods during which times an opacity of 20 percent or more is observed, the unit is considered to be in violation. (2) The "three minute moving average" means that the check for violations is made for a three minute time period which is continuously changing to include the latest fifteen second reading recorded and the eleven consecutive readings which preceded it. If the average opacity for any three minute period exceeds 20 percent then the unit is considered to be in violation. The average opacity is calculated using 15 second interval readings.

12. Comment: One commenter requested clarification of deficiency 8.c (45 FR 62163) concerning 401 KAR 61:140, Existing By-Product Coke Manufacturing Plants. The commenter requested clarification of EPA's reference to "... 90% of Method 9, ...".

EPA Response: A printing error exists in the September 18, 1980 Federal Register at page 62169, Deficiency 8.c.; correcting the error should clarify EPA's position. The portion of Deficiency 8.c. which reads "... 90% of Method 9, ...", should be "... 90% of Method 9's ...". Therefore, Deficiency 8.c. should read as follows:

"c. The proposed regulation requires 85 percent capture of total particulate matter generated during pushing. If an enforceable test procedure were included with the standard so that compliance could be

documented, EPA would have no objections to the proposed regulation. However, in the absence of such a test procedure, EPA would recommend an opacity standard such as, no visible emissions during pushing should equal or exceed 20 percent opacity except for 6 seconds per push (averaged over a number of pushes) as read over the collector main or 90 percent of Method 9's 15 second readings shall not equal or exceed 20 percent opacity during the pushing operation and the subsequent travel of the hot car to the quench tower."

13. Comment: One commenter took issue with EPA's reference to and reliance upon data made available as part of the rulemaking docket on the September 18, 1980, Federal Register notice in evaluating whether Kentucky's submittal satisfies the requirements of Part D concerning RACT for iron and steel sources. Furthermore, the commenter contends that a review of the docket revealed no evidence to support any of EPA's evaluations which are based upon the docket.

EPA Response: As explained in a notice published in the Federal Register on September 8, 1980 (45 FR 59198-99), which is referenced here, EPA, in its review of Part D plans for areas containing iron and steel sources, has endeavored to verify independently that the plans submitted by the states in fact include provisions which represent RACT. To that end, EPA has collected and evaluated data which reflect levels of performance achieved by various iron and steel sources applying control technology, and has made those data available for review as part of the rulemaking docket. However, EPA has not established categorical RACT requirements, and a State may develop its RACT requirements independently of those data; EPA will approve any submitted RACT requirement that the State shows will satisfy the requirements of the Act for RACT, based on the economic and technical circumstances of the particular sources being regulated. In addition, contrary to the general contention of the commenter, EPA believes that its discussion and analysis in the September 18, 1980 Federal Register notice is amply supported by the referenced data and material in the rulemaking docket.

Actions

With the exception noted below, the Administrator conditionally approves Kentucky's 1979 revisions, for total suspended particulate nonattainment areas except for Marshall County, on the condition that deficiencies noted be corrected by October 15, 1981. EPA defers action on the TSP plan revisions for Marshall County pending

clarification and supplemental material on the enforcement procedures for implementing Kentucky regulation 401 KAR 61:070. It is EPA's intent to fully approve these revisions when the Commonwealth corrects the deficiencies. If the corrections are not forthcoming by October 15, 1981, EPA will act to disapprove the related plan revisions.

EPA disapproves as part of the Kentucky SIP regulation 401 KAR 61:015 Section 8, Paragraph (2)(d), because it relaxes compliance schedules for sources which are not being made subject to stricter emission limits. However, since Kentucky's 1979 revisions, without the disapproved provision substantially complies with the requirements of Part D and may therefore be conditionally approved, Section 110(a)(2)(I) of the CAA will not apply.

The 1978 edition of 40 CFR Part 52 lists in the subpart for Kentucky the applicable deadlines for attaining ambient standards (attainment dates) required by Section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides for attainment by the deadlines required by Section 172(a) of the Act, the new deadlines are substituted on Kentucky's attainment date chart in 40 CFR Part 52. The earlier attainment dates under Section 110(a)(2)(A) will be referenced in a footnote to the chart. Sources subject to plan requirements and deadlines established under Section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new Section 172 plan requirements.

Congress established new attainment dates under Section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. These new deadlines were not intended to give sources that failed to comply with pre-1977 plan requirements by the earlier deadlines more time to comply with those requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

Section 110(a)(2) of the Act made clear that each source had to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the

1977 Amendments. It would be a perversion of clear congressional intent to construe part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under part D.

(123 Cong. Rec. H 11958, daily ed. November 1, 1979)

To implement Congress' intention that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977

Amendments. EPA cannot approve such compliance date extensions even though a Section 172 plan revision with a later attainment date has been approved. However, a compliance date extension beyond a pre-existing attainment date may be granted if it will not contribute to a violation of an ambient standard or a PSD increment. (See General Preamble for Proposed Rulemaking, 44 FR 20373-74 (April 4, 1979).)

In addition, sources subject to pre-existing plan requirements may be relieved of complying with such requirements if a Section 172 plan imposes new, more stringent control requirements that are incompatible with controls required to meet the pre-existing regulations. Decisions on the incompatibility of requirements will be made on a case-by-case basis.

This action is effective immediately. EPA finds good cause to make this conditional approval immediately effective, because the Clean Air Act restricts new construction where plans are not approved after June 30, 1979. Making the conditional approval immediately effective will terminate the restriction as soon as possible.

Under Section 307(b)(1) of the Clean Air Act, judicial review of these actions is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether a regulation is

"significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044. (Secs. 110, 172, and 301 of the Clean Air Act (42 U.S.C. 7410, 7502, and 7601))

Dated: December 15, 1980.

Douglas M. Costle,
Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the Federal Register on July 1, 1980.

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

Subpart S—Kentucky

1. Section 52.920 is amended by adding a subparagraph (14) to paragraph (c) as follows:

§ 52.920 Identification of plan.

(c) The plan revisions listed below were submitted on the dates specified.

(14) 1979 revisions for Part D requirements for total suspended particulate nonattainment areas (Bell, Boyd, Jefferson, McCracken and Muhlenberg counties, that portion of Bullitt County in Shepherdsville, that portion of Campbell County in Newport, that portion of Daviess County in Owensboro, those portions of Henderson County in and around Henderson, that portion of Lawrence County in Louisa, that portion of Madison County in Richmond, that portion of Perry County in Hazard, that portion of Pike County in Pikeville, and that portion of Whitley County in Corbin) submitted on June 29, 1979, by the Kentucky Department for Natural Resources and Environmental Protection.

2. Section 52.926 is revised to read as follows:

§ 52.926 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. The dates reflect the information presented in Kentucky's plan, except where noted.

Air quality control region	Pollutant					Nitrogen dioxide	Carbon monoxide	Ozone
	Particulate matter		Sulfur oxides					
	Primary	Secondary	Primary	Secondary				
Appalachian Intrastate:								
a. Bell County.....	g	h	b	b	b	b	b	b
b. Perry County.....	g	h	b	b	b	b	b	b
c. Whitley County.....	g	h	b	b	b	b	b	b
d. Rest of AQCR.....	c	c	b	b	b	b	b	b
Bluegrass Intrastate:								
a. Fayette County.....	a	c	b	b	b	b	b	g
b. Madison County.....	g	h	b	b	b	b	b	b
c. Rest of AQCR.....	a	c	b	b	b	b	b	b
Evansville (Indiana)-Owensboro-Henderson (Kentucky) Interstate:								
a. Daviess County.....	g	i	g	g	b	b	b	b
b. Henderson County.....	g	i	a	e	b	b	b	g
c. Webster County.....	c	c	g	g	b	b	b	b
d. Rest of AQCR.....	c	c	a	e	b	b	b	b
Huntington (West Virginia)-Ashland (Kentucky)-Portsmouth-Ironton (Ohio) Interstate:								
a. Boyd County.....	g	i	g	b	b	b	b	g
b. Lawrence County.....	g	h	b	b	b	b	b	b
c. Rest of AQCR.....	c	c	b	b	b	b	b	b
Louisville Interstate:								
	g	i	i	i	b	h	h	h
Metropolitan Cincinnati Interstate:								
a. Boone County.....	c	c	a	d	b	d	h	h
b. Campbell County.....	g	h	a	d	b	d	h	h
c. Kenton County.....	c	c	a	d	b	d	h	h
d. Rest of AQCR.....	c	c	a	d	b	d	c	c
North Central Kentucky Intrastate:								
a. Bullitt County.....	g	h	b	b	b	b	b	b
b. Rest of AQCR.....	a	c	b	b	b	b	b	b
Paducah (Kentucky)-Cairo (Illinois) Interstate:								
a. McCracken County.....	g	h	g	f	b	b	b	b
b. Marshall County.....	c	g	a	f	b	b	b	b
c. Muhlenberg County.....	g	h	g	g	b	b	b	b
d. Rest of AQCR.....	c	c	a	f	b	b	b	b
South Central Kentucky Intrastate:								
	b	b	b	b	b	b	b	b

See § 81.318 of this chapter to identify the specific nonattainment area.

Note.—Dates or footnotes in italics are prescribed by the Administrator because the plan did not provide a specific date or the dates provided were not acceptable. Sources subject to plan requirements and attainment dates established under Section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.926 (1979 edition).

a. Air quality levels presently below primary standards or area is unclassifiable.

b. Air quality levels presently below secondary standards or area is unclassifiable.

c. April 1975.

d. July 1975.

e. July 1977.

f. July 1978.

g. December 31, 1982.

h. December 31, 1987.

i. 18 month extension for plan submittal granted; attainment date not yet established.

j. January 1, 1985.

3. Section 52.935 is added as follows:

§ 52.935 Control strategy: Particulate matter.

(a) Part D—Conditional approval.

(1) With the exception of Regulation 401 KAR 61:015, Section 8, paragraph (2)(d), which is disapproved, the 1979 total suspended particulate revisions for Bell, Boyd, Jefferson, McCracken and Muhlenberg counties, and that portion of Bullitt County in Shepherdsville, that portion of Campbell County in Newport, that portion of Daviess county in Owensboro, those portions of Henderson County in and around Henderson, that portion of Lawrence County in Louisa, that portion of Madison County in Richmond, that portion of Perry County in Hazard, that portion of Pike County in Pikeville, and that portion of Whitley County in Corbin, nonattainment areas, are approved on condition that the following be submitted by October 15, 1981:

(i) A revision to Regulation 401 KAR 50:055 Section 2(3) specifying a method for determining opacity for sources of intermittent emissions other than Method 9 of Appendix A, 40 CFR Part 60.

(ii) A revision to Regulation 401 KAR 50:055 section 2(6) which specifies that adjustment of opacity standards be restricted to stack or control device discharges.

(iii) Revisions to Regulation 401 KAR 50:055 Section 6, Alternative Emission Reduction Options to correct deficiencies as outlined in the September 18, 1980 Federal Register, 45 FR 62163 at page 62168, deficiency number 3.

(iv) Revisions to Regulation 401 KAR 61:005 General Provisions, Section 2(1) and 2(2) such that the regulation clearly requires a performance test as the means for demonstrating compliance.

(v) A revision to Regulation 401 KAR 61:020 Section 3, Standard for Particulate Matter, such that the regulation has a specific requirement of reasonably available control technology (RACT) applicable to sources of process fugitive emissions.

(vi) Revisions to Regulation 401 KAR 61:075; Steel Plants and Foundries Using Existing Electric Arc Furnaces, which specifies a method for determining opacity for sources of intermittent emissions other than Method 9 of Appendix A, 40 CFR Part 60, and an opacity limitation which represents a level of control equivalent to RACT.

(vii) A Revision to Regulation 401 KAR 61:080, Steel Plants Using Existing Basic Oxygen Process Furnaces, which specifies a method for determining opacity for sources of intermittent emissions other than Method 9 of Appendix A, 40 CFR Part 60, and an opacity or mass limitation which represents a level of control equivalent to RACT.

(viii) Revisions to Regulation 401 KAR 61:140; Existing By-Product Coke Manufacturing Plants, which specify standards and emissions limitations which represent a level of control equivalent to RACT for battery topside leaks, charging, pushing, and quenching operations, as well as appropriate test methods.

(ix) Establishment of a Regulation which will represent a level of control equivalent to RACT for blast furnace casthouses.

[FR Doc. 80-40056 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-26-M