

sicken and die—by either an overdose or underdose; and that, therefore, it should not be affirmed as GRAS. The other endorsed selenium supplementation of laying hen feeds but only when such supplementation is permitted through analyzed premixes as specified in the selenium feed additive regulation (i.e., 21 CFR 573.920). Eight respondents submitted literature reprints and other information supporting the safe and effective use of selenium in feed for laying hens; however, none of the data addressed human safety, although one reprint did discuss the role of selenium in preventing myocardial infarcts.

Based on review of the GRAS petition and all the available information, including the comments, FDA concludes that selenium for use in the feed of laying hens is not GRAS but is a food additive and subject to section 409 of the act (21 U.S.C. 348). FDA bases this conclusion on a finding that dietary levels of selenium in excess of 2 ppm in experimental animals have been shown to be hepatotoxic, and therefore selenium is not GRAS under the conditions of its intended use and is therefore a food additive (see section 201(s) of the act (21 U.S.C. 321(s))). In circumstances like this, however, the agency has the authority to treat a petition for GRAS status as a food additive petition and approve the petition if the facts so warrant. The agency chose to follow this course of action and has, before publishing this notice, notified the petitioner its decision to review selenium as a food additive for use in layer chickens. Accordingly, as provided by § 570.38 (a) and (c)(1) (21 CFR 570.38 (a) and (c)(1)), FDA is promulgating a food additive regulation governing the use of selenium.

The safety of selenium in layer feeds is supported by extensive documentation in scientific literature. Selenium is currently approved as a food additive for use in the feed of growing chickens, turkeys, swine, sheep, and cattle in § 573.920 *Selenium*. The agency concludes that available data show that the proposed use of 0.1 ppm of selenium in laying chicken feeds is safe. The agency is hereby amending § 573.920 to permit the additional safe use of selenium as a food additive in the feed of layers. Additionally, FDA is deleting the age restriction, "up to 16 weeks of age," in § 573.920. This restriction had been required because of the lack of available egg residue data. The agency has carefully reviewed the data in the petition regarding the residue levels in eggs and edible tissues from

chickens fed selenium as a supplement at 0.1 ppm for a period of up to 76 weeks. The agency concludes from this study that supplementation in the feed of laying chickens and of chickens beyond 16 weeks of age is safe.

FDA has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding, contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979; 44 FR 71742) may be seen in the Dockets Management Branch, Food and Drug Administration (address above), between 9 a.m. and 4 p.m., Monday through Friday.

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 573 is amended in § 573.920 by revising paragraphs (b)(1) and (c)(1) and by removing paragraph (f), as follows:

§ 573.920 Selenium.

- (b) * * *
- (1) Chickens: In complete feed at a level not to exceed 0.1 part per million.
- (c) * * *
- (1) It is to be incorporated into each ton of the complete feed of chickens, swine, sheep, beef cattle, and dairy cattle by a premix containing no more than 90.8 milligrams of added selenium and weighing not less than 1 pound.

(f) [Removed]

Any person who will be adversely affected by the foregoing regulation may at any time on or before September 28, 1981, submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any

particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective August 28, 1981.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)))

Dated: August 21, 1981.

Mervin H. Shumate,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 81-25034 Filed 6-27-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-004E]

Occupational Exposure to Lead; Supplemental Statement of Reasons and Amendment of Standard; Notice of Deferral of Effective Date

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of further deferral of effective date of final rule.

SUMMARY: This notice defers the effective date of the Supplemental Statement of Reasons and Amendment of the Lead Standard until October 11, 1981. The action is necessary to allow additional time to consider the appropriateness of the lengthy and complex document in light of the numerous petitions for administrative review which have been received, and is consistent with the order of the U.S. Court of Appeals for the D.C. Circuit.

DATE: The effective date is deferred until October 11, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Beliles, Occupational Safety and Health Administration, Room

N3617, U.S. Department of Labor, Washington, D.C. 20210 (202) 523-7081.

SUPPLEMENTARY INFORMATION: On January 21, 1981, OSHA published in the Federal Register (46 FR 6134) a supplemental statement of reasons assessing the technological and economic feasibility of meeting the permissible exposure level for lead contained in the lead standard (29 CFR 1910.1025), in 46 industries. The document was prepared in response to a remand order from the U.S. Court of Appeals for the D.C. Circuit, in the "United Steelworkers of America v. Marshall," 647 F.2d 1189 (D.C. Cir. 1980). The Supplemental Statement of Reasons covered nearly 100 pages in the Federal Register, and was originally scheduled to be effective on February 20, 1981. On February 3, 1981, the agency joined industry petitioners in a motion to the circuit court to defer action on the Supplemental Statement of Reasons until the OSHA has had an opportunity to review petitions for administrative reconsideration. On February 6, 1981, the effective date of the Supplemental Statement of Reasons was deferred until March 30, 1981 pursuant to a Presidential Memorandum to the Secretary of Labor and other cabinet officials (46 FR 11253). On March 27, 1981, OSHA further deferred the effective date, for a period of 30 days, so that it might have additional time to consider the numerous petitions for administrative review of the Supplemental Statement of Reasons—a very lengthy and complex document.

On April 28, 1981 (46 FR 23742) and on June 29, 1981 (46 FR 33244) the effective date was again deferred in succession until August 31, 1981.

On July 17, 1981, the D.C. Circuit granted the joint motion to defer action on the Supplemental Statement until October 11, 1981, pending OSHA's review of the petitions for administrative reconsideration. "United Steelworkers v. Marshall," No. 79-1048.

Accordingly, the effective date of the Supplemental Statement is hereby deferred until October 11, 1981. Due to the short deferral period, notice and opportunity for public comment on the deferral is impractical and unnecessary under 5 U.S.C. 553 and 29 U.S.C. 655(b).

Signed at Washington, D.C., this 25th day of August, 1981.

Thorne G. Auchter,
Assistant Secretary of Labor.

[FR Doc. 81-25307 Filed 8-27-81; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL 1917-1]

State and Local Assistance; Grants for Construction of Wastewater Treatment Works

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 three provisions of EPA's construction grant regulations. Those provisions govern the preparation, submittal and use of State project priority lists (PPL). Wastewater treatment construction grant projects must be included on a State project priority list to be eligible for EPA grant assistance (CFDA Number 66.418).

The President has proposed several changes to the Clean Water Act. If those changes are not enacted, he has indicated he will not request a construction grant appropriation for FY 1982. Because of the potential changes in the Act and the uncertainty of funding it is unreasonable for EPA to require States to develop FY 1982 project priority lists at this time. The June 19, 1981, rescission of construction grant funds further affects States' PPL management. 40 CFR 35.915(f)(1) establishes a project bypass procedure that States may use when "fundable projects" (projects they expect to fund during the fiscal year) are delayed. The rescission reduced each State's allotment, so many previously fundable projects are below the funding line. Following the bypass procedure for those previously fundable projects would be unnecessarily burdensome.

The class deviation published as part of this notice permits States to continue to use their FY 1981 project priority lists until EPA issues additional guidance and, thus, provides States the flexibility to obligate their remaining funds.

DATES: This deviation is effective August 17, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Pippen, Jr., Director, Grants Administration Division (PM-216), 401 M Street SW., Washington, DC 20460, (202) 755-0650.

SUPPLEMENTARY INFORMATION: Under Executive Order 12291, EPA is required to judge whether a regulation is major and therefore subject to the regulatory impact analysis requirements of the Order or whether it may follow other

development procedures. This deviation will not have a substantial impact on the economy. Therefore, we have determined it is not a major regulation and, thus, it is not subject to the impact analysis requirements of Executive Order 12291.

Dated: August 17, 1981.

John L. Horton,
Assistant Administrator for Administration (PM-206).

Dated: August 14, 1981.

James N. Smith,
Acting Assistant Administrator for Water (WH-556).

Class Deviation from 40 CFR 35.1533-4(b)(4) 40 CFR 35.915(e) and 40 CFR 35.915(f)(1) of EPA's Construction Grant Regulations

From: Belle N. Davis, Acting Director, Grants Administration Division (PM-216)

To: Regional Administrators

Dated: August 17, 1981.

The President has proposed numerous changes to the Clean Water Act (CWA). If these changes are not enacted he has indicated he will not request construction grant funding for FY 1982. Because of those potential changes in the CWA and the uncertainty of funding, it is unreasonable for EPA to issue guidance for preparing State FY 1982 project priority lists (PPL) at this time. However, 40 CFR 35.1533-4(b)(4) requires States to submit to EPA each year's final PPL by July 15, and 40 CFR 35.915(e) requires the Regional Administrator to review and accept each year's PPL before EPA will fund projects from the list during the next fiscal year. Also, the President signed a construction grant rescission (Pub. L. 97-12) on June 19, 1981, which further affects States' PPL management. 40 CFR 35.915(f)(1) establishes a project bypass procedure that States may use when "fundable projects" (projects they expect to fund during the fiscal year) are delayed. The rescission reduced each State's allotment, so many previously fundable projects are below the funding line. Following the bypass procedure for those previously fundable projects would be unnecessarily burdensome.

To eliminate these problems, I am approving a deviation from all three provisions to permit States to use their FY 1981 PPLs until EPA issues additional PPL guidance. This deviation will provide States the flexibility to obligate their remaining funds.

1. **40 CFR 1533-4(b)(4).** I am approving a deviation from the submission dates of 40 CFR 35.1533-4(b)(4) for FY 1982 PPL's. If Congress appropriates funds for FY 1982, EPA will issue PPL guidance based on the statutory changes and will establish new submission dates.

2. **40 CFR 35.915(e).** I am approving a deviation from 40 CFR 35.915(e) to permit States to continue to use their FY 1981 PPL's in FY 1982, if they wish to do so.

3. **40 CFR 35.915(f)(1).** I am approving a deviation to permit States to fund any project on the fundable portion of their FY 1981 PPL's

based on the States' allotments before the rescission, providing funds are available and they wish to do so. However, States shall follow the bypass procedures of § 35.915(f)(1) to fund projects below the original FY 1981 funding line.

Dated: August 17, 1981.

Concur:

John L. Horton,

Assistant Administrator for Administration (PM-208).

Dated: August 14, 1981.

Concur:

James N. Smith,

Acting Assistant Administrator for Water (WH-556).

[FR Doc. 81-25238 Filed 8-27-81; 8:45 am]

BILLING CODE 6560-29-M

40 CFR Part 52

[A-1-FRL 1920-7]

Approval and Promulgation of Implementation Plans; Connecticut Revision; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice of correction to final rule.

SUMMARY: This document corrects an omission in the regulatory portion of a final rulemaking for the Connecticut State Implementation Plan under the Clean Air Act published on December 23, 1980 (45 FR 84769). The change being made corrects an error in regulatory language and does not represent any new information submitted by the state of Connecticut.

FOR FURTHER INFORMATION CONTACT: Margaret McDonough, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-4448.

SUPPLEMENTARY INFORMATION: This notice corrects an omission in the regulatory portion of a final rulemaking published on December 23, 1980 (45 FR 84769). On page 84785, columns 2 and 3 of the preamble to that rulemaking, EPA discussed revisions to Connecticut regulations 19-508-4 (source monitoring requirements) and 19-508-5 (stack emissions testing) and addressed all comments submitted during the 30-day public comment period which followed EPA's proposed approval of these revisions (45 FR 45094 July 2, 1980). EPA also stated its decision to approve these revisions. However, EPA inadvertently failed to include regulations 19-508-4 and 19-508-5 in the list of regulations submitted by the state as part of its SIP. Today's correction adds these regulations to the list.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Part 52 of the Code of Federal Regulations, 52.370, paragraph (c) is amended by adding subparagraph (16) as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *
(16) Revisions to regulation 19-508-4 (source monitoring requirements) and regulation 19-508-5 (stack emissions testing) submitted on November 7, 1977 by the Commissioner of the Connecticut Department of Environmental Protection.

Dated: August 17, 1981.

Leslie Carothers,

Acting Regional Administrator.

[FR Doc. 81-25066 Filed 8-27-81; 8:45 am]

BILLING CODE 6560-39-M

40 CFR Part 52

[A-1-FRL 1896-8]

Approval and Promulgation of Implementation Plans; Connecticut; Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving two narrative revisions to the Connecticut State Implementation Plan (SIP) submitted by the Commissioner of the Connecticut Department of Environmental Protection (DEP) on December 19, 1980 (received on December 22, 1980) and amended on March 11, 1981 and July 15, 1981. One of the revisions to the SIP is a modeling guideline developed for use by the DEP to determine whether the impacts of its actions relative to point sources of pollution will be in compliance with ambient air quality standards. The other is a new program, the "Air Pollution Control/Energy Trade Option" (Energy Trade Program), which allows the DEP to consider improved energy efficiency in determining an alternative sulfur control strategy under the existing sulfur regulation, 19-508-19. Based on the DEP's energy-use calculation and an ambient impact review, certain individual premises may be allowed to purchase and burn fuel oil containing up to 2.2% sulfur by weight. These two SIP revisions were proposed for approval on May 1, 1981 (46 FR 24597), and three comment letters were received during the comment period which ended on June 9, 1981.

The May 1 Notice of Proposed Rulemaking (NPR) also proposed new sulfur limitations for individual sources smaller than 250 million Btu/hour which would subsequently be approved under the Energy Trade Program. No action is being taken at this time on these individual revisions. Final federal review and rulemaking will be conducted after individual state approvals are granted.

EFFECTIVE DATE: August 28, 1981.

ADDRESSES: Copies of the Connecticut submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460; the Office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, DC; and the Connecticut Department of Environmental Protection, Air Compliance Unit, State Office Building, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Sarah Simon, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-4448.

SUPPLEMENTARY INFORMATION: The Connecticut DEP has developed two amendments which it has submitted to EPA for inclusion in the federal SIP. One, the Energy Trade Program, is a new sulfur control strategy based on the existing sulfur control regulation, 19-508-19. This program will allow the use of higher sulfur content fuel where energy use has been reduced if it can be shown that the impacts of such an approval are in compliance with ambient air quality standards. Each approval will be in the form of an order issued by the Commissioner of the DEP which establishes a sulfur control strategy for each specific facility. As discussed in the May 1 NPR, the limits established for each facility will be enforceable under state and federal law.

The other amendment is Connecticut's *New Source Ambient Impact Analysis Guideline* (the Connecticut Modeling Guideline) which outlines an impact analysis procedure on the level of EPA's screening model procedure but which includes (1) a model the state has developed (based on EPA's PTMTP model), (2) a modeled background component consisting of nearby sources which emit 15 tons or more of pollution in a year, and (3) a background component based on the state's monitoring system data.

As described and proposed in the NPR, EPA plans to use a new federal SIP revision procedure for approving revised sulfur-in-fuel limitations for those Connecticut sources under 250 mBtu/hour which will be approved by the Commissioner of the DEP under the Energy Trade Program. Under this new procedure, EPA has already proposed approval for these small sources. The DEP will review each small source application using the procedures approved today and will give notice and receive comments on each such approval. The EPA public comment period will run concurrently with the state public comment period, and EPA will not issue a separate notice of proposed rulemaking for each small source approval. Each small source approval by the DEP will be submitted to EPA as a SIP revision. EPA will review the state's submittal for these sources, including any public comments received, prior to taking final rulemaking action. Sources 250 mBtu/hour or larger will not be covered by this new procedure. Approvals of these larger sources will require separate proposed and final federal rulemaking as individual SIP revisions.

Three comment letters were received during the comment period addressing the energy trade program and EPA's proposed new SIP revision procedure. Two of these also addressed the approval of Connecticut's modeling procedures.

1. The Adequacy of the CT Modeling Guideline

One commenter supported the approval of the Connecticut Modeling Guideline. Several issues were raised regarding the Connecticut Modeling Guideline by another commenter who argued that the guideline should not be approved.

It was suggested that DEP's technique for handling complex terrain be carefully scrutinized. EPA has compared the terrain handling techniques of Connecticut's model to those described in EPA's models, and it has been determined that under very limited terrain and atmospheric conditions, the DEP's terrain handling technique would not be consistent with the benchmark EPA method contained in the CRSTER model. In response, the DEP has agreed to change the Connecticut Modeling Guideline to address this inconsistency, as set forth in the July 15, 1981 submittal from the state.

The commenter suggested that EPA require Connecticut to "employ one of EPA's proposed models for handling complex terrain, i.e. COMPLEX I or COMPLEX II". The COMPLEX I and II

models have not yet been proposed by EPA for general use. Further, these two models use actual observed meteorology as input rather than the assumed worst case meteorology used by the Connecticut screening procedure. In any event, the state's terrain handling technique for complex terrain is essentially the same as that in COMPLEX I or II, that is, a constant plume height approach for stable atmospheric conditions and a half-height approach for non-stable conditions. The Connecticut Modeling Guideline is also more conservative than EPA's currently recommended screening model for complex terrain, the VALLEY model, because its model uses centerline concentrations versus the sector averaged concentrations used in the VALLEY model and because it assumes a greater degree of meteorological persistence than the VALLEY model.

The commenter's statement that the Connecticut Modeling Guideline uses a statewide background average is incorrect. As described in the Connecticut Modeling Guideline and in the May 1 NPR, background levels for towns which have no local monitor are derived from the average of data from towns with similar area source emission densities. Actual monitored levels are used for towns in which monitors are located if they are not unduly influenced by nearby sources which would already be explicitly modeled per the Connecticut Modeling Guideline.

EPA disagrees with the commenter's statement that the DEP's model is a "new type of half-way model" that is "more refined than a screening model yet not as refined as a refined model". The Connecticut Modeling Guideline is clearly a screening procedure that is in no way meant to replace any EPA refined models. Following the use of the Connecticut screening procedures, any further refined analysis must be done in accordance with EPA's models and procedures.

The commenter exaggerates the administrative problems that may result from approving separate state screening models. We are dealing here with the approval of a simple screening procedure that allows for an evaluation of its conservatism based on comparing individual assumptions in the procedure with EPA practices. In any event, EPA is not required to reject Connecticut's procedures because of possible administrative problems.

As amended by the July 15, 1981 submittal, the Connecticut Modeling Guideline is at least as conservative as EPA's recommended screening procedures. It will not result in

underpredictions in comparison to either EPA screening or refined modeling. The Connecticut model is a modification of the EPA screening model PTMTP. Many of the technical features of the DEP's model, such as the basic dispersion algorithm (the Gaussian plume equation), the dispersion coefficients and the plume rise algorithm, are the same as those in the PTMTP model. In those areas where the DEP's screening procedures differ from EPA's, the Connecticut Modeling Guideline is either equivalent to or more conservative than EPA's procedures. Connecticut has proposed that its SIP include what it believes is a less resource-intensive screening analysis procedure. Because Connecticut's approach is at least as conservative as EPA's method, and thus will protect the NAAQS at least as well, EPA is approving the Connecticut Modeling Guideline for use in the state program.

The commenter argues, however, that under 40 CFR 52.21 (1)(2), EPA may not approve Connecticut's procedures unless the use of EPA procedures is "inappropriate." But EPA does not interpret this regulation in the way suggested by the commenter. First, while EPA's *Guideline on Air Quality Models (Guideline)* and its subsequent revisions are applicable more generally, the regulation cited by the commenter governs model substitutions only for Prevention of Significant Deterioration permitting. Second, in allowing the substitution of non-*Guideline* models for *Guideline* models when the *Guideline* models are "inappropriate", the regulation does not rule out substituting non-*Guideline* models or procedures when a state believes they are simpler and less resource-intensive to use and they are at least as conservative as EPA's. The EPA *Guideline* cited by the regulation provides for deviations from individual *Guideline* recommendations without stating any requirement that EPA find such recommendations to be "inappropriate". See pp. 1, 13, 14, 18. In approving Connecticut's procedures, EPA is operating pursuant to, rather than departing from, the requirements of the *Guideline*.

2. EPA's Proposed New SIP Revision Procedures

One commenter stated that review for individual source approvals under the SIP was not delegable to the state and that there was "no good cause for eliminating the EPA separate review procedures as required by the Administrative Procedures Act". This commenter also said that EPA could not approve individual sources in advance.

The two other commenters strongly supported the state's authority to conduct the review necessary for compliance with the Clean Air Act. One went on to say that once EPA approved the state's Energy Trade Program, it should not require that individual approvals under the program be submitted as SIP revisions.

EPA has not delegated its SIP review responsibility and has not given final approval to individual sources in advance. It has always been a state responsibility to provide the technical demonstration that a SIP (or a SIP revision) will comply with the air quality requirements of the Clean Air Act. EPA's role is to insure the adequacy of the state's demonstrations. Under the approach to small source approvals proposed in the May 1 NPR, the adequacy of the state's demonstrations will be insured because state demonstrations will be conducted in accordance with the procedures approved today. The program review procedures are sufficiently circumscribed so as to insure that the DEP will only be approving sulfur-in-fuel limitation revisions that will not violate the National Ambient Air Quality Standards (NAAQS). Because of this, EPA proposed on May 1 to approve all small sources to be covered by the program. In addition, each individual state source approval is to be submitted to EPA for approval as a SIP revision. Each submittal will include a certification that the source has been reviewed under the procedures of and meets all requirements of the approved program and the Connecticut Modeling Guideline, a certification that the approved public notice and comment procedures have been followed and copies of all public comments received and any DEP responses to them. Rather than waiting to start the review of state approvals of individual sources after the approvals have occurred, EPA has worked with the state in advance and approved the detailed procedures to be followed.

EPA is not now dispensing with individual review and final rulemaking for small source approvals. That approach was not proposed in the NPR and will not be adopted without first providing an opportunity for public comment on it.

EPA is today reaffirming its intention to use an expedited procedure for small source approvals. EPA's plan to have its public comment periods run concurrently with the state public comment periods, without issuing new NPR's, will substantially accelerate application processing time and

eliminate duplication of effort while providing an adequate opportunity for public comment. State and federal public comment periods need not be separate to be productive. The May 1 NPR opened a public comment period to review EPA's proposed approval of the generic state program and all the individual applications which will be considered under the new program. The public has already had an opportunity to comment on the procedures which will be employed in approving small sources. The application of the procedures to the small sources will be a straightforward process. Moreover, there will be a public notice and comment period when each individual application is processed, and thus the public will have a further opportunity to comment on specific source approvals. As noted in the NPR, the state will maintain a mailing list of all persons interested in being notified about each proposed individual approval. The elimination of unnecessary duplication for small source approvals will enable EPA to refocus its limited resources on the larger sources. Because the NAAQS will be protected under the review procedures of this program, because adequate opportunities to comment have been and will be provided and because only smaller sources are included in this new expedited procedure, EPA has determined that a second NPR for each individual approval would be impracticable, unnecessary and contrary to the public interest. EPA believes that its new approach is a significant regulatory reform, that there is good cause for it and that the approach is consistent with the Administrative Procedures Act.

3. Protection of the NAAQS

Connecticut's air now meets the NAAQS for sulfur dioxide (SO₂). Although the Energy Trade Program approved today expands Connecticut's interpretation of its SIP regulations governing SO₂ emissions, the SIP as revised today will continue to insure the maintenance of the NAAQS for SO₂. The SIP revision requires that each applicant be analyzed under the Connecticut Modeling Guideline procedures approved today to determine SO₂ NAAQS compliance.

One commenter argues, however, that EPA cannot approve the Energy Trade Program because Connecticut has not attained the secondary NAAQS for total suspended particulates (TSP) and has not yet submitted a plan to attain the secondary TSP standard.

The Clean Air Act does not require that Connecticut's SO₂ implementation plan provide for the attainment or

maintenance of the NAAQS for TSP. The Energy Trade Program is a revision to Connecticut's SO₂ implementation plan. It does not change any requirement of Connecticut's SIP which relates to TSP, and any facility approved to burn higher sulfur content fuel under the Energy Trade Program will have to meet the existing TSP emission limit in Connecticut's SIP. EPA is not required to disapprove this SO₂ SIP revision as a sanction for Connecticut's lateness in submitting a secondary TSP attainment plan. Such a sanction would be far more severe than the sanction provided by Congress in Section 110(a)(2)(I) of the Clean Air Act which was applicable in states which were late in submitting primary attainment plans.

In fact, the Energy Trade Program as applied to individual sources or in the aggregate, will not threaten the attainment of the NAAQS for TSP. Analysis of the causes of Connecticut's TSP problem was done in connection with the submission of Connecticut's primary attainment plan and indicated that the problem was due largely to non-traditional sources rather than to the point sources which will be covered by the Energy Trade Program. Moreover, in its primary TSP attainment plan, Connecticut has already committed to adopt RACT controls for various categories of point sources including all point sources which will be covered by the Energy Trade Program. Connecticut agreed to adopt RACT statewide because this control was identified as the control, for the kinds of point sources covered, that would be required as part of Connecticut's secondary attainment plan. See 45 FR 84780-84781 (December 23, 1980). Any facility approved to burn higher sulfur content fuel under the Energy Trade Program will be required to meet the more stringent RACT limitations for TSP.

The NAAQS for TSP will also be protected by another provision in Connecticut's Energy Trade Program. As set out in the SIP revision narrative, the DEP will be doing an evaluation of each application to insure that: (1) No NAAQS will be violated or (2) that each approval will not "cause a 'significant' increase in pollutant levels which would exacerbate an existing standard violation." The DEP's definition of "significant" is discussed in the May 1 NPR. In the SIP revision narrative, the DEP provided a rationale for its policy of allowing insignificant increases in TSP. The narrative states that the TSP attainment problem "should be addressed through enforcement action, or if applicable, a SIP revision which would affect the sources causing the

violation in an equitable manner * * *, rather than at the expense of the applicant whose increase in impact is insignificant".

4. PSD

A commenter asserted that the Prevention of Significant Deterioration (PSD) program would be subverted and Connecticut would be losing its clean air margin through the Energy Trade Program. Connecticut is required to operate its Energy Trade Program in accordance with the PSD requirements set forth by Congress as interpreted in *Alabama Power Company v. Costle*, 636 F. 2d 323 (D.C. Cir. 1979), and the subsequent EPA regulations. In accordance with the non-uniform baseline date determination required in *Alabama Power Company*, in general the PSD program is initiated when the first source in an area files a PSD permit application and establishes a baseline. Once any baseline date and area have been established in Connecticut, any emissions increases in the baseline area will consume increment, whether resulting from the Energy Trade Program's approvals or any other actions.

The state is not currently administering the PSD program. However, in the Energy Trade Program narrative, the state has committed to review premises to determine whether they impact a baseline area and to provide EPA with sufficient information to administer the PSD program.

On May 21, 1981, the DEP submitted a description of a proposed mechanism for evaluating increment consumption for SIP revisions under the Energy Trade Program as EPA had requested in the NPR. EPA will not give final approval to an individual source under the Energy Trade Program if the source will impact an area in which a baseline date has been set unless the state and EPA have agreed to a mechanism for reviewing increment consumption due to such actions.

5. Other Issues

One commenter stated that EPA had not adequately evaluated whether the Energy Trade Program actually encourages conservation or determined who properly should bear the cost of impact analysis. EPA does not judge SIP revisions by these two concerns.

The commenter also complained that there had been violations of proper procedures at the state administrative level in that the notice of the state hearing was misleading and in that the change in the state's program was accomplished by reinterpreting a regulation rather than changing the

regulation. EPA notes that the same commenter participated in the state hearing without raising either of these issues and thus did not give the state a chance to take timely corrective action. The commenter thus may have waived any right to have these issues ruled on subsequently. Moreover, the SIP revisions approved today include opinions by the state Attorney General confirming that the existing state regulations could be utilized in implementing and enforcing the energy trade program. Assuming that the procedural issues raised by the commenter are properly before EPA, EPA finds that the state law issues were adequately addressed by the state Attorney General and that there was reasonable notice and hearing for these SIP revisions, as required by the Clean Air Act.

Another commenter argued that the requirement that each source approved under the Energy Trade Program agree that the resulting order is enforceable under federal and state law is unnecessary and "could raise serious constitutional questions". While EPA agrees that the enforceability of the orders issued under the program would be clear even in the absence of such agreements, the state has included this requirement in its narrative revision, and the commenter produced no evidence that there is any constitutional problem with requiring such agreements.

Attachments #1 and #2 of the December 19, 1980 submittal, entitled "SULFUR DIOXIDE" and "TRANSPORT OF SULFUR DIOXIDE" were not reviewed by EPA because they had no bearing on the new program procedures. EPA is not approving these; they were not described in the Notice of Proposed Rulemaking and will not be incorporated into the SIP under this notice. In addition, the EPA is not approving the "Sample Analysis of the Btu Bubble Application" found in attachment #3, "CONTROL STRATEGIES FOR SULFUR OXIDES", because the DEP has requested that this be deleted from their submittal.

As proposed in the NPR, EPA is also not approving state procedures which are strictly for analysis to determine compliance with Connecticut's 24-hour secondary SO₂ standard.

Actions

1. EPA is approving the "Air Pollution Control/Energy Trade Option" narrative revision to Connecticut's SIP. However, EPA is not approving the procedures to determine compliance with Connecticut's 24-hour secondary SO₂ standard. Further, EPA will not finally approve an individual SO₂ SIP revision

under this program for any source which will impact an area in which a PSD baseline date has been set unless the state and EPA have agreed to a mechanism for reviewing the increment consumption due to such SIP revisions.

2. EPA is approving the Connecticut *New Source Ambient Impact Analysis Guideline* for Connecticut's use in projecting potential impacts of point source emissions.

3. EPA is taking no action on the individual source revisions proposed on May 1, 1981. Before final approval, each application must be reviewed and acted upon in accordance with the concurrent State/EPA procedures set forth in this notice and the NPR. No such review of individual sources has yet been completed by the state.

4. EPA is not approving attachments #1 and #2 or the Section titled "Sample Analysis of a Btu Bubble Application" in attachment #3 of the state's December 19, 1980 submittal.

Pursuant to the provisions of 5 U.S.C. 605(b) I certify that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. The attached rule constitutes a SIP approval under Sections 110 and 172 of the Clean Air Act. This action imposes no new requirements and merely approves state rules. In addition, it provides for greater flexibility and the use of more cost effective measures in meeting existing state requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulation Impact Analysis. This regulation is not major because it will only approve Connecticut state actions enabling sources to meet the existing state requirements with more cost-effective control strategies and greater flexibility and because it adds no new requirements.

The Agency finds that good cause exists for making this action immediately effective since implementation plan revisions are already in effect under state law and EPA approval imposes no additional regulatory burden.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

After evaluation of the state's submittal, it has been determined that these Connecticut revisions meet the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, these revisions are approved as revisions to

the Connecticut State Implementation Plan.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the Second 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.

(Section 110(a) and Section 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)))

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

Dated: August 21, 1981.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart H—Connecticut

1. Section 52.370, paragraph (c) is amended by adding subparagraphs (14) and (15) as follows:

§ 52.370 Identification of plan.

(c) * * *

(14) Non-regulatory additions to the plan which were submitted on December 19, 1980, and amended on March 11, 1981, by the Connecticut Department of Environmental Protection amending the sulfur control strategy to include an "Air Pollution Control/Energy Trade Option" except for submittal attachments #1 and #2, "SULFUR DIOXIDE" and "TRANSPORT OF SULFUR DIOXIDE" and the section of attachment #3 "CONTROL OF SULFUR OXIDES" entitled "Sample Analysis of a Btu Bubble Application".

(15) Non-regulatory addition to the plan of the state *New Source Ambient Impact Analysis Guideline*, for use in state program actions, submitted on December 19, 1980, and amended on March 11, 1981, and July 15, 1981.

[FR Doc. 81-25227 Filed 8-27-81; 8:45 am]

BILLING CODE 5560-38-M

40 CFR Part 52

[A-5-FRL 1899-3]

Approval and Promulgation of State Implementation Plans; Ohio and Michigan

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rules and correction of final rule.

SUMMARY: In the April 10, 1981, Federal Register (46 FR 21390) EPA proposed to approve as a revision to the Ohio State Implementation Plan (SIP) the deadline by which the State committed itself to remedy the conditionally approved portion of the total suspended particulate (TSP) plan submitted for Middletown, Ohio. In the May 26, 1981, Federal Register (46 FR 28179) EPA also proposed to approve, as a revision to the Michigan SIP, Rules 283 and 610 of the Michigan Air Pollution Control Commission. EPA provided separate thirty day public comment periods for its proposed approval of both the Michigan and Ohio SIP revisions. No public comments were received on EPA's proposed approval of either SIP revision. The purpose of today's notice is to announce final approval of the schedule deadline for Ohio and Michigan Rules 283 and 610.

EPA is today also correcting an error which was published in March 31, 1981, and June 18, 1981, Federal Register (46 FR 19471, 31881). In the regulatory portion of the Federal Register, footnote e to § 52.1875 shows a date of December 31, 1982, for attainment of the carbon monoxide standard in Summit County, Ohio which is inapplicable because Summit County is no longer classified as a nonattainment area.

EFFECTIVE DATE: This final rulemaking is effective on September 28, 1981.

ADDRESSES: Copies of the Ohio and Michigan SIP revisions are available at: U.S. Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604;

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460;

The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Richard Clarizio, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6029.

SUPPLEMENTARY INFORMATION:

Ohio SIP Revision

In final rulemaking action published in the March 31, 1981, Federal Register (46 FR 19468) EPA identified certain deficiencies in the TSP plan developed and submitted for the Middletown, Ohio primary nonattainment area. EPA also noted in that Federal Register that the State of Ohio on February 18, 1981 had committed itself to correct these deficiencies by December 31, 1981. In the April 10, 1981, Federal Register (46 FR 21390) EPA proposed to approve the December 31, 1981, date. At that time, EPA provided a thirty day period, until May 11, 1981, during which interested individuals were asked to comment on EPA's proposed approval of the December 31, 1981 date. No public comments were received. EPA, therefore, approves, as part of the Ohio SIP, the state's commitment to the December 31, 1981, date for submittal of the corrective materials for the Middletown, Ohio TSP plan.

Ohio—Correction

Summit County, Ohio is part of the Greater Metropolitan Cleveland Interstate Region (AQCR 174). In AQCR 174, Summit and Cuyahoga Counties were designated by EPA on March 3, 1978 (43 FR 8962), as nonattainment for carbon monoxide. In 40 CFR 52.1875, footnote e specifies that attainment of the carbon monoxide standard will be December 31, 1982 for Summit County and December 31, 1987 for Cuyahoga County. On March 4, 1981 (46 FR 15140), EPA changed the designation of Summit County from nonattainment to attainment/unclassifiable for carbon monoxide. As a consequence of this action, footnote e should have been revised to eliminate the December 31, 1982 attainment date for Summit County, Ohio. In the regulatory portion of the March 30, 1981 and June 18, 1981, Federal Register (46 FR 19468, 31881), however, footnote e of § 52.1875 erroneously contained the December 31, 1982 date for Summit County, Ohio. The purpose of today's action is to correct that error by deleting the following phrase from footnote e: For Summit County attainment is to be achieved by December 31, 1982.

Michigan SIP Revision

On July 28, 1980, the State of Michigan submitted to EPA as revisions to the Michigan SIP amendments to Rules 283 and 610 of the Michigan Air Pollution

Control Commission. The amendments to Rule 283 exempt equipment used for hydraulic or hydrostatic testing from the requirements for an operating permit.

The amendments to Rule 610 consist of revisions to Table 62 of the rule. This table lists minimum coating transfer efficiencies for several emission limitations for automobile and light duty truck coating operations. The specific changes in Table 62 were listed in the May 26, 1981 Federal Register and are not repeated here. EPA proposed to approve the amendments to Rules 283 and 610 in the May 26, 1981 Federal Register. At that time, EPA provided a thirty day period, until June 25, 1981, during which interested individuals were asked to comment on EPA's proposed approval of amended Rules 283 and 610. No public comments were received. EPA, therefore, finally approves, as part of the Michigan SIP, amended rules 283 and 610.

Pursuant to the provisions of 5 U.S.C. section 605(b), I hereby certify that the attached Rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The attached actions merely approve actions already approved by the State of Michigan and Ohio.

Under Executive Order 12291 (Order) EPA must judge whether a regulation is "major" and, therefore, subject to the requirements of a regulatory impact analysis. Today's actions do not constitute major regulations since they merely approve actions which were developed and approved by the States of Michigan and Ohio. This rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by the Order.

Under Section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit by (60 days from the date of application).

Under Section 307(b)(2) of the Act, the requirements which are the subject of today's actions may not be challenged later in civil or criminal proceedings brought to EPA to enforce these requirements.

Note.—Incorporation by reference of the Ohio and Michigan SIP was approved by the Director of the Federal Register on July 1, 1981.

(Sections 110 and 172 of the Act)

Dated: August 8, 1981.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

Title 40 of the Code of Federal Regulations, Chapter 1 Part 52 is amended as follows:

(1) Section 52.1870(c) is amended by adding subparagraph (30) to read as follows:

§ 52.1870 Identification of plan.

* * *

(c) * * *

(30) On February 18, 1981, the State of Ohio committed itself to submit by December 31, 1981, the corrective materials for the Middletown, Ohio total suspended particulate plan.

(2) In § 52.1875 footnote e to the table is revised to read as follows:

§ 52.1875 Attainment for national standards.

* * *

e. For Cuyahoga County the attainment date is to be achieved by December 31, 1987.

* * *

(3) Section 52.1880 is amended by revising paragraph (d)(1) to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * *

(d) * * *

(1) For the Middletown, Ohio primary nonattainment area, Rule 08 of Chapter 3745-17 of the Ohio Administrative Code provided the State submits by December 31, 1981 the individual enforceable control programs required by Rule 08 for each of the fugitive emission sources, located in the primary nonattainment area.

Subpart KX—Michigan

Title 40 of the Code of Federal Regulations, Chapter 1 Part 52 is amended as follows:

(1) In § 52.1170(c) subparagraph (39) is added:

§ 52.1170 Identification of plan.

* * *

(c) * * *

(39) On July 28, 1980, the State of Michigan submitted to EPA, as revisions to the Michigan SIP, amendments to Rules 283 and 610 of the Michigan Air Pollution Control Commission.

[FR Doc. 81-25233 Filed 9-27-81; 8:45 am]

BILLING CODE 5550-38-M

40 CFR Part 52

[A-3-FRL 1911-4]

Approval and Promulgation of Implementation Plans; Approval of Revision of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On January 28, 1981 (46 FR 9128) EPA proposed approval of a revision to the Pennsylvania State Implementation Plan (SIP) which sets forth a plan which will assure attainment of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO₂) in those portions of Armstrong County, Pennsylvania which were designated as SO₂ nonattainment areas. Today, EPA is announcing final approval of this revision to the Pennsylvania SIP.

EFFECTIVE DATE: September 28, 1981.

ADDRESSES: Copies of the materials submitted by the Commonwealth of Pennsylvania and comments received on these materials may be examined during normal business hours at:

U.S. Environmental Protection Agency,
Air Media and Energy Branch, Curtis
Building, 6th & Walnut Streets,
Philadelphia, PA 19106; ATTN: Ed
Shoener

Department of Environmental
Resources, Bureau of Air Quality
Control, Fulton Bank Building, Third
and Locust Streets, Harrisburg, PA
17120; ATTN: Gary L. Triplett
Public Information Reference Unit,
Room 2922, EPA Library, U.S.
Environmental Protection Agency, 401
M Street, S.W., Waterside Mall,
Washington, D.C. 20460

Office of the Federal Register, 1100 L
Street, S.W., Room 8401, Washington,
D.C. 20408

FOR FURTHER INFORMATION CONTACT:
Ed Shoener (3AH11), U.S. Environmental
Protection Agency, Region III, 6th and
Walnut, Philadelphia, PA 19106;
telephone: 215/597-8179.

SUPPLEMENTARY INFORMATION: On
March 3, 1978 (43 FR 8962), and
September 2, 1978 (43 FR 40515), EPA
designated a portion of Armstrong
County, Pennsylvania (Madison
Township, Mahoning Township, Boggs
Township, Washington Township and
Pine Township) as a nonattainment area
for sulfur dioxide (SO₂). The
nonattainment was caused primarily by
SO₂ emissions from the West Penn
Power Company (WPPC) Armstrong
Power Plant. The nonattainment