

for at least 75 percent of the services no longer must obtain medical services through the direct care system, even though they are available. In these circumstances, where the services are obtained at a civilian facility, the government will realize an overall cost savings since the beneficiary's other insurance will pay for at least 75 percent of the services.

As authorized under title 5, United States Code, paragraph 553(b)(3)(B), the final regulation is being published and no previous public comment has been requested. The change is mandated through public law signed into effect on December 29, 1981, and we do not believe it is in the public interest to delay the implementation through the publication of a proposed rule.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR, Chapter I, is amended as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

Section 199.10 is amended:

- a. By Removing the existing "Note" immediately following paragraph (a)(9)(i) and adding a new "Note".
- b. By adding a "Note" immediately following paragraph (b)(5)(iii).
- c. By adding a "Note" immediately following paragraph (c)(3)(xiii).

§ 199.10 Basic program benefits.

- (a) * * *
- (9) * * *
- (i) * * *

Note.—According to section 741 of the Department of Defense Appropriation Act, 1982, (Pub. L. 97-114) a Nonavailability Statement must be obtained for payment of non-emergency civilian inpatient care if a Uniformed Services hospital is within a 40-mile radius of the patient's residence. Effective October 1, 1981, this limitation shall not apply to payments that supplement primary coverage provided by other insurance plans or programs that pay for at least 75 percent of the covered services. Application of these provisions after September 30, 1982, will depend on the language of future Appropriation Acts.

- (b) * * *
- (5) * * *
- (iii) * * *

Note.—According to section 741 of the Department of Defense Appropriation Act, 1982, (Pub. L. 97-114), and effective October 1, 1981, a Nonavailability Statement is not required for payments that supplement primary coverage provided by other

insurance plans or programs that pay for at least 75 percent of the covered services. Application of this provision after September 30, 1982, will depend on the language of future Appropriation Acts.

- (c) * * *
- (3) * * *
- (xiii) * * *

Note.—According to section 741 of the Department of Defense Appropriation Act, 1982, (Pub. L. 97-114), and effective October 1, 1981, a Nonavailability Statement is not required for payments that supplement primary coverage provided by other insurance plans or programs that pay for at least 75 percent of the covered services. Application of this provision after September 30, 1982, will depend on the language of future Appropriation Acts.

(Pub. L. 97-114)

M. S. Healy,

OSD Federal Register Liaison Officer,
Washington Headquarters Services,
Department of Defense.

May 6, 1982.

[FR Doc. 82-12798 Filed 5-10-82; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 199

[DOD Regulation 6010.8-R, Amdt. No. 14]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Amendment on Electric-Powered, Cart-Type Vehicles

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Final rule.

SUMMARY: This amends language in the CHAMPUS Regulation to allow benefit consideration for electric-powered, cart-type vehicles. This revised language will allow benefit consideration for these vehicles which may be appropriately used as alternatives to electric wheelchairs, when they are medically necessary and certified by a physician to best meet the patient's medical care needs based on the patient's physical condition and which can be operated safely by the patient.

EFFECTIVE DATE: Retroactive to October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Charles M. Gallegos, Chief, Policy Branch, OCHAMPUS, Aurora, Colorado 80045, telephone 303-361-8608.

SUPPLEMENTARY INFORMATION: In FR Doc. 81-3380, appearing in the Federal Register on May 4, 1981 (46 FR 24964), the Office of the Secretary of Defense published a proposed amendment to rule regarding a revision to the language of the CHAMPUS Regulation to allow benefit consideration for electric-

powered cart-type vehicles which may be appropriately used as alternatives to electric wheelchairs, when they are medically necessary and certified by a physician to best meet the patient's medical care needs based on the patient's physical condition and which can be operated safely by the patient.

Paragraphs 199.10(d)(3)(ii)(4) "Note" and 199.11(h)(2)(ii)(a)(4) "Note" specifically exclude cart-type vehicles (such as the Amigo) as durable medical equipment and durable equipment, respectively. It has been determined that classification of electrically-powered cart-type vehicles as always being primarily transportation is no longer appropriate.

While some cart-type vehicles are prescribed primarily for purposes of the patient's convenience and transportation, it is felt that benefits should be available under those special circumstances where an electric-powered, cart-type vehicle can be appropriately used as an alternative to an electric wheelchair and (1) it is determined the patient cannot, from a medical standpoint, use a standard, nonelectric wheelchair; and (2) the physician has determined that this particular type of vehicle best meets the patient's medical needs. A proper evaluation of the patient's medical and physical condition must be made to determine whether the patient requires such a vehicle and is capable of handling it safely. Program benefits will not be available for both an electric-powered, cart-type vehicle and an electric wheelchair at the same time.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR, Chapter I is amended as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

1. Section 199.10 is amended by revising the "Note" following paragraph (d)(3)(ii)(a)(4) to read as follows:

§ 199.10 Basic program benefits.

- (d) * * *
- (3) * * *
- (ii) * * *
- (a) * * *
- (4) * * *

Note.—A wheelchair (or program-approved alternative) is not considered transportation in the sense of paragraph (d)(3)(ii)(a)(4) of this section. It is qualified as durable medical equipment under paragraph (d)(3)(ii)(a)(2) of this section, because by providing basic mobility, it retards further deterioration of the patient's physical condition. Mobility beyond

basic mobility provided by a wheelchair (or a program-approved alternative) is considered to be primarily transportation.

2. Section 199.11 is amended by revising the "NOTE" following paragraph (h)(2)(ii)(a)(4) to read as follows:

§ 199.11 Program for the handicapped.

- (h) *
- (2) *
- (ii) *
- (a) *
- (4) *

Note.—A wheelchair (or program-approved alternative) is not considered transportation in the sense of this paragraph (h)(2)(ii)(a)(4) of this section. It is qualified as durable equipment under paragraph (h)(2)(ii)(a)(2) of this section above because by providing basic mobility, it retards further deterioration of the patient's physical condition. Mobility beyond that basic mobility provided by a wheelchair (or a program-approved alternative) is considered to be primarily transportation.

(10 U.S.C. 1079, 1086; 5 U.S.C. 301)

M. S. Healy,
OSD Federal Register Liaison Officer,
Washington Headquarters Services,
Department of Defense.

May 6, 1982.

[FR Doc. 82-12799 Filed 5-10-82; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[A-9-FRL-2116-2]

Denial of Petition for Reconsideration Filed by Pacific Legal Foundation; California State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of denial of petition for reconsideration.

SUMMARY: The Administrator of the Environmental Protection Agency (EPA) is denying a petition for reconsideration filed on July 31, 1981 by the Pacific Legal Foundation. This petition concerns two EPA actions under the Clean Air Act which affect six urban areas in the State of California: A July 1, 1979 interpretive rule which imposed a construction moratorium on States which had not revised State Implementation Plans (SIPs) as required by Part D of Title I of the Act, and a final action of December 12, 1980 imposing restrictions on certain federal funds for areas which failed to

provide evidence of legal authority to implement a vehicle inspection/maintenance program.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Acting Director, Air Management Division, United States Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105, (415) 974-8201.

SUPPLEMENTARY INFORMATION:

Background

New provisions of the Clean Air Act enacted in 1977 required States to revise their State Implementation Plans (SIPs) to prohibit, after July 1, 1979, the construction or modification of major stationary sources of pollution in any area which has not obtained one or more of the national ambient air quality standards, unless the State has in effect a revised SIP meeting the requirements of Part D of Title I of the Act. See Sections 110(a)(2)(I) and 172(a).

On July 2, 1979 (44 FR 38471) EPA promulgated an interpretive rule which had the effect of inserting this ban into each State's SIP and making it effective in each State which has not yet received EPA approval for its Part D SIP. (See also 40 CFR 52.24 (1981)).

Another provision of the 1977 amendments to the Clean Air Act requires EPA and the Department of Transportation to restrict federal funds made available under the Clean Air Act and Title 23 of the United States Code in any area where transportation controls are needed to assure attainment and a State has not submitted (or is not making reasonable efforts to submit) a revised SIP meeting the requirements of Section 172. See Section 176(a). In addition, Section 316(b) authorizes EPA to limit grants for sewage treatment construction if the State does not have in effect an approved SIP which accounts for direct or indirect increases in air pollution caused by sewage treatment construction. EPA published policies and procedures to implement Sections 176(a) and 316 on April 10, 1980 (45 FR 24692) and August 11, 1980 (45 FR 53382).

On July 2, 1979 California had not received approval of the SIP revisions required for its nonattainment areas. Accordingly, the construction moratorium required under Section 110(a)(2)(I) went into effect in these areas. Moreover, when the State did submit its SIP revisions, it requested attainment date extensions for ozone and/or carbon monoxide for several urban areas. Six of these areas had

populations exceeding 200,000.¹ Under the Clean Air Act and EPA policy, the State was required to submit a schedule for the implementation of vehicle inspection/maintenance (I/M) programs in these areas. See Section 172(b)(11)(B) and 44 FR 20372 (April 4, 1979). It was also required to submit evidence of adequate legal authority to carry out the I/M programs. See Section 172(b)(10).

Although the State submitted a schedule for an I/M program in all six areas, it did not submit evidence of legal authority needed to implement the program. On December 12, 1980 (45 FR 81746) EPA found that the State legislature had repeatedly introduced, but failed to enact legislation that could authorize I/M. EPA concluded that the State was not making "reasonable efforts" to adopt and submit the needed legal authority. Therefore, EPA imposed the funding restrictions required by Section 176(a) and authorized by Section 316(b).

Petition for Reconsideration

On July 31, 1981 the Pacific Legal Foundation (PLF) submitted a petition for reconsideration of the funding limitations imposed on December 12, 1980 in the six urban areas of California that had not submitted evidence of legal authority of I/M. The petition also requested EPA to reconsider the construction moratorium imposed on July 2, 1979 insofar as it affected the same areas.²

I have reviewed the petition and concluded that it presents no new information warranting the reopening of the December 12, 1980 action imposing funding restrictions or the July 2, 1979 action imposing the construction moratorium in the six California urban

¹The areas and plans affected are: South Coast Air Basin (ozone, carbon monoxide); San Francisco Bay Area Air Basin (ozone, carbon monoxide); San Diego Air Basin (ozone, carbon monoxide); Sacramento Metropolitan Area (ozone, carbon monoxide); Ventura County (ozone only); and Fresno County (ozone, carbon monoxide).

²With respect to the construction moratorium for these areas, as noted above California subsequently submitted SIP revisions for all six of the areas needing I/M programs. The Agency has taken final action to disapprove the ozone and carbon monoxide plan revisions for two of these areas on the basis that these plans do not satisfy Part D because they failed to provide evidence of legal authority to implement an I/M program. See 46 FR 5965 (South Coast Air Basin) and 47 FR 11866 (San Francisco Bay Air Basin). These actions had the effect of reaffirming the construction moratorium for these areas. No challenge to either action has been filed, although the period for filing a challenge to the San Francisco disapproval is still open. EPA has proposed to disapprove the SIP revisions for the other four areas on the same grounds. EPA expects to take final action on these revisions in the near future.

areas required to implement I/M.³ Accordingly, the petition for reconsideration is denied.

This determination is a final agency action of local or regional effect. Under Section 307(b)(1) jurisdiction for review of this action is available only in the U.S. Court of Appeals for Ninth Circuit, by filing on or before July 12, 1982.

Dated: April 30, 1982.

Anne M. Gorsuch,
Administrator.

[FR Doc. 82-12587 Filed 5-10-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-4-FRL-2108-5]

Approval and Promulgation of Implementation Plans; Kentucky, Bubble Action for Borden Chemical Co. in Jefferson County

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a State Implementation Plan (SIP) revision to bring Borden Chemical Company into compliance with emission limits of the Air Pollution Control District of Jefferson County (the District). On March 5, 1982, EPA received the revision submitted by the Kentucky Department for Natural Resources and Environmental Protection (Kentucky DNREP). The SIP revision presents an alternative emission reduction, or "bubble", plan for Borden's plant in Jefferson County.

EFFECTIVE DATE: This action will be effective on July 12, 1982 unless notice is received within 30 days that someone wishes to submit critical comments.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street, S.W., Washington, D.C.
20460

Air Programs Branch, EPA, Region IV,
345 Courtland Street, N.E., Atlanta,
Georgia 30365

Library, Office of the Federal Register,
1100 L Street N.W., Room 8401,
Washington, D.C. 20005

Division of Air Pollution Control,
Kentucky Department for Natural
Resources and Environmental
Protection, 18 Reilly Road, Bldg. 2,
Fort Boone Plaza, Frankfort, Kentucky
40601

FOR FURTHER INFORMATION CONTACT:

Ms. Sally Bethea, Air Programs Branch,
EPA Region IV at the above address and
telephone number 404/881-3286 or FTS
257-3286.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1981 a public hearing was held in Louisville on the proposed SIP revision for the Borden compliance plan. The Jefferson County Air Pollution Control Board approved the plan, immediately after the hearing. On March 5, 1982, EPA received the SIP revision from Kentucky DNREP.

Discussion

Borden Chemical Co. (the Company) stores methanol in a 740 thousand gallon uninsulated fixed roof tank prior to production of formaldehyde. The District's Regulation 6.13 Sec. 3(a) requires a vapor recovery system, or equivalent measure, to control volatile organic compounds (VOC), such as methanol, under an established vapor pressure. Borden chose to use banked VOC emission credits purchased from B. F. Goodrich to provide the required emission reductions at the facility, in lieu of installing control equipment. Borden chose this approach because it was the most cost effective and the quickest way to achieve compliance, in comparison with the other alternatives.

On September 1, 1981, the District issued Banking Permit No. 391-81 to Borden, reflecting the purchase by Borden of 25 tons of banked VOC emission credits from the B. F. Goodrich Company. The District's banked emission ledger for Goodrich Banking Permit 89-79 indicates a corresponding reduction of 25 tons per year (TPY) of VOC credits.

Borden proposes to use its banked emission credits to offset the 15.64 TPY of actual methanol emissions from its

Jefferson County storage tank. The Company has agreed to use 17.2 of the 25 tons of credit to offset the actual emissions at a 1.1 to 1 ratio. Both the Borden banking permit and its operating permit reflect this 17.2 TPY offset. This action is in accordance with the attainment strategy for the District as outlined in the Kentucky SIP. Under the Kentucky SIP, the banked emission limits are permanent and enforceable.

Action

EPA today approves the SIP revision submitted by Kentucky. This approval is being made without prior proposal because the bubble procedure used in this case is straightforward, noncontroversial, and affects only the two companies involved. In addition, we anticipate no comments.

This action will be effective 60 days from the date of this Federal Register notice. However, if we receive notice within 30 days that someone wishes to submit critical comments, we will withdraw this action and will publish two subsequent notices before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from today]. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

On July 1, 1981, the Director of the Federal Register approved the incorporation by reference of the State Implementation Plan for the State of Kentucky.

(Section 110 of the Clean Air Act (42 U.S.C. 7410))

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

³ PLF also submitted a supplement to its petition on December 8, 1981. In this supplement PLF urged EPA to reconsider the funding limitations and the construction moratorium in light of a recent decision by the U.S. Court of Appeals for the Fifth Circuit in *City of Seabrook v. EPA*, 659 F.2d 1349 (5th Cir. 1981). The Fifth Circuit, in reviewing EPA's approval of a Texas I/M statute, held that Section 172 of the Act does not require states to submit evidence of legal authority for I/M until July 1, 1982—unless EPA makes a finding that I/M is available before that date. EPA does not agree with the Fifth Circuit's interpretation of Section 172 for the reasons set out in its brief in *Pacific Legal Foundation v. Gorsuch* (9th Cir. Nos. 81-7060 and 80-4442). Accordingly, the *Seabrook* decision does not provide a basis for granting the petition for reconsideration.

Dated: April 30, 1982.
 Anne M. Gorsuch,
 Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart S—Kentucky

In § 52.920, paragraph (c) is amended by adding subparagraph (32) as follows:

§ 52.920 Identification of plan.

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

(32) Revision to the State Implementation Plan for a bubble action at Borden Chemical Co., Jefferson County, Kentucky, received by EPA from the Kentucky Department for Natural Resources and Environmental Protection on March 5, 1982.

[FR Doc. 82-12748 Filed 5-10-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 52 and 62

[A-3-FRL-2055-2]

Approval of Revisions of Maryland's Air Quality Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of several amendments of the Maryland regulations submitted on May 18, 1981 as revisions to the Maryland Air Quality Plans. These revisions include new regulations for the control of Volatile Organic Compound (VOC) emissions and for the control of total reduced sulfur emissions from kraft pulp mills, as well as miscellaneous State-initiated regulation changes and revised stack test procedures. Additionally, EPA is removing obsolete provisions of the Maryland SIP relating to transportation control plans. These changes provide for attainment of the ozone and carbon monoxide standard without relying on the Federally promulgated measures.

EFFECTIVE DATE: June 10, 1982.

ADDRESSES: Copies of the revision and associated support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency,
 Region III, Air Media & Energy

Branch, Curtis Building, Tenth Floor,
 Sixth & Walnut Streets, Philadelphia,
 PA 19106, Attn: Patricia Sheridan
 Maryland Department of Health &
 Mental Hygiene, Air Management
 Administration, 201 W. Preston Street,
 Baltimore, Maryland 21201, Attn:
 George P. Ferreri
 Public Information Reference Unit,
 Room 2922, EPA Library, U.S.
 Environmental Protection Agency, 401
 M Street SW., Washington, D.C. 20460
 The Office of the Federal Register, 1100
 L Street NW., Room 8401,
 Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT:
 Mr. Edward A. Vollberg (3AW12), U.S.
 Environmental Protection Agency,
 Region III, Sixth & Walnut Streets,
 Philadelphia, PA 19106, telephone: 215/
 597-8990.

SUPPLEMENTARY INFORMATION: On May 18, 1981, the Governor of the State of Maryland submitted numerous regulation changes as revisions to the Maryland State Implementation Plan. The amendments include:

1. The adoption of reasonably available control technology (RACT) regulations for the Round II Control Techniques Guidelines for the control of volatile organic compound (VOC) emissions.

2. The adoption of regulations to control the total reduced sulfur (TRS) emissions from kraft pulp mills in accordance with Section 111(d) of the Clean Air Act and Part 60 of Title 40 of the Code of Federal Regulations.

3. Miscellaneous State regulation changes.

4. Revised stack test procedures.
 A public hearing on the changed and new regulations was held on December 15, 1980 in Baltimore, Maryland. The regulations were adopted on April 8, 1981 and became effective State regulations on June 8, 1981. These amendments have been developed and submitted in accordance with the requirements of Title 40, Code of Federal Regulations, Part 51. Further, on January 20, 1981, the Governor of Maryland requested that the federally promulgated transportation measures in 40 CFR Part 52 that were obsolete be deleted. EPA is deleting them because Maryland has submitted plan revisions satisfying the requirements of Part D of Title I of the Clean Air Act (the Act), as amended, (45 FR 53470, August 12, 1980). These revisions provide for attainment of the ozone and carbon monoxide standard without relying on the federally promulgated measures.

EPA proposed action on the revisions submitted by the State of Maryland in the Federal Register on October 1, 1981

at 46 FR 48240. The regulation amendments and EPA's evaluation were explained in detail in that notice. Those wishing a complete description of Maryland's revisions are referred to the proposal notice.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Public Comments

EPA solicited public comment on the new and amended regulations and the changes to 40 CFR Part 52 in the proposed rulemaking notice. One comment discussed below was received concerning the regulation governing the VOC emissions from synthesized pharmaceutical manufacture (COMAR 10.18.21.14).

Comment: The commenter was concerned with the EPA approval of the regulation which he referred to as "not sufficiently stringent to meet the RACT definition as provided in the relevant control techniques guideline." Further, he is concerned that new facilities would be allowed by the regulation to have emissions greater than those represented by the CTG guidelines.

Response: In the proposed rulemaking notice, EPA noted that Maryland exempted sources emitting less than 40 lbs/day from emission controls on all air dryers and production equipment exhaust systems. This differed from the EPA guidance which recommended controls on sources which emit 33 lbs/day or more of VOC emissions. Further, EPA noted that the one source affected by the regulation has emissions greater than 40 lbs/day. The source is meeting the Maryland regulation achieving the required 90% emission reductions from air dryers and process equipment exhaust systems. This level of control is compatible with the CTG guidelines. Therefore, EPA determines that this regulation as applied, reflects RACT for the pharmaceutical category in the State of Maryland.

In response to the commenter's concern regarding new facilities locating in the State of Maryland emitting VOC's in amounts greater than those represented by the CTG guidance, it should be noted that Maryland has regulations for New Sources in Nonattainment Areas. These regulations were developed to satisfy the requirements of section 173 of the Clean Air Act, and were approved by EPA on September 11, 1981 (46 FR 45340). One of the requirements of the regulation is that a new source must meet the Lowest Achievable Emission Rate (LAER). By