

(ii) *Middle Zone*. Beginning at the intersection of the Potomac River Bridge with the Virginia shore; thence to Light 33; thence to latitude 38°19'06", longitude 76°57'07" which point is about 3,300 yards east-southeast of Light 30; thence to Line of Fire Buoy O, about 1,150 yards southwesterly of Swan Point; thence to Line of Fire Buoy M, about 1,700 yards south of Potomac View; thence to Line of Fire Buoy K, about 1,400 yards southwesterly of the lower end of Cobb Island; thence to Buoy 14, abreast of St. Clements Island, thence southwesterly to a point near the northeast shore of Hollis Marsh at latitude 38°10'00", longitude 76°45'23.5"; thence northwesterly to Line of Fire Buoy J, about 3,000 yards off Popes Creek, Virginia; thence to Line of Fire Buoy L, about 3,600 yards off Church Point; thence to Line of Fire Buoy N, about 900 yards off Colonial Beach; thence to Line of Fire Buoy P, about 1,000 yards off Bluff Point; thence northwest to latitude 38°17'52", longitude 77°01'00", a point of the Virginia shore on property of Naval Surface Weapons Center, a distance of about 3,800 yards; thence northerly along the shore of the Naval Surface Weapons Center to Baber Point, latitude 38°18'42", longitude 77°01'45"; and thence north-northwest to latitude 38°19'09", longitude 77°02'08", a point on the Main Dock at the Naval Surface Weapons Center. Firing is normally conducted in this zone daily except Saturdays, Sundays, and national holidays.

(2) * * *

(ii) When firing is in progress, no fishing or oystering vessels shall operate within the danger zone affected unless so authorized by the Naval Surface Weapons Center's patrol boats. Oystering and fishing boats or other craft may cross the river in the danger zone only after they have reported to the patrol boat and received instructions as to when and where to cross. Deep-draft vessels using dredged channels and propelled by mechanical power at a speed greater than five miles per hour may proceed directly through the danger zones without restriction except when especially notified to the contrary. Unless instructed to the contrary by the patrol boat, small craft navigating up or down the Potomac River during firing hours shall proceed outside of the northeastern boundary of the Middle Danger Zone. All craft desiring to enter the Middle Danger Zone when proceeding in or out of Upper Machodoc Creek during firing hours will be instructed by the patrol boat; for those craft which desire to proceed in or out of

Upper Machodoc Creek on a course between the western shore of the Potomac River and a line from the Main Dock of the Naval Surface Weapons Center to Line of Fire Buoy P, clearance will be granted to proceed upon request directed to the patrol boat.

(iii) The regulations in this section shall be enforced by the Commander, Naval Surface Weapons Center and such agencies as he/she may designate. Patrol boats, in the execution of their mission assigned herein, shall display a square red flag during daylight hours for purposes of identification; at night time, a 32 point red light shall be displayed at the mast head. The Naval Surface Weapons Center (Range Control) can be contacted by Marine VHF radio (Channel 16) or by telephone (703) 663-8791.

5. Section 204.41 amended by revising paragraphs (a) and (b)(7) to read as follows:

§ 204.41 Potomac River, Mattawoman Creek and Chicamuxen Creek; U.S. Naval Ordnance Station.

(a) *The danger zone*. Beginning at a point on the easterly shore of the Potomac River at latitude 38°36'00", longitude 77°11'00"; thence to latitude 38°34'30"; longitude 77°13'00"; thence to latitude 38°33'20", longitude 77°14'20"; thence to latitude 38°32'20", longitude 77°15'10"; thence to latitude 38°32'00", longitude 77°15'00"; thence to latitude 38°32'30", longitude 77°14'00"; thence upstream along the easterly shoreline of Chicamuxen Creek to its head thence downstream along the westerly shoreline of Chicamuxen Creek to the southernmost point of Stump Neck; thence northeasterly along the shoreline of Stump Neck to the mouth of Mattawoman Creek; thence along the southeasterly shore of Mattawoman Creek to the pilings remaining from the footbridge connecting the left bank of the creek to the Naval Ordnance Station; thence along the northwesterly shore of Mattawoman Creek from the pilings remaining from the footbridge to the mouth of the creek; thence in a northeasterly direction along the easterly shore of the Potomac River to the point of beginning.

(b) * * *

(7) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Ordnance Station, Indian Head, Maryland.

6. Section 204.42 is amended by revising paragraph (a) to read as follows:

§ 204.42 Chesapeake Bay, Point Lookout to Cedar Point; aerial firing range and target areas, U.S. Naval Air Test Center, Patuxent River, Maryland.

(a) *Aerial firing range*—(1) *The danger zone*. The waters of Chesapeake Bay within an area described as follows: Beginning at the easternmost extremity of Cedar Point; thence easterly to the southern tip of Barren Island; thence southeasterly to latitude 38°01'15", longitude 76°05'33"; thence southwesterly to latitude 37°59'25", longitude 76°10'54"; thence northwesterly to latitude 38°02'20", longitude 76°17'26"; thence northerly to Point No Point Light; thence northwesterly to the shore at latitude 38°15'45"; thence northeasterly along the shore to the point of beginning. Aerial firing and dropping of nonexplosive ordnance will be conducted in this area throughout the year, Monday through Saturday, except national holidays.

PART 207—NAVIGATION REGULATIONS

Section 207.125 is amended by revising paragraph (c) to read as follows:

§ 207.125 Patuxent River, Maryland; restricted areas U.S. Naval Air Test Center, Patuxent River, Maryland.

(c) On occasions, seaplane landings and takeoffs will be practiced in the seadrome area north of the U.S. Naval Air Station, Patuxent River. This area includes those waters of the Patuxent River between Town Point and Hog Point shoreward of a line described as follows: Beginning at a point on the shore just west of Lewis Creek, bearing 161°30' true, 2,000 yards from Patuxent River Light 8; thence to a point bearing 130° true, 1,850 yards from Patuxent River Light 8; thence to a point bearing 247°30' true, 3,650 yards from Drum Point Light 2; thence to point bearing 235° true, 2,060 yards from Drum Point Light 2; thence to a point bearing 129° true, 700 yards from Drum Point Light 2; thence to a point bearing 137° true, 1,060 yards from Drum Point Light 2; and thence to a point on the shore west of Harper Creek entrance, bearing 158°30' true, 1,900 yards from Drum Point Light 2.

Authority: 33 U.S.C. 1, 3.

[FR Dec. 63-32388 Filed 12-5-83; 8:45 am]

BILLING CODE 3710-92-M

PANAMA CANAL COMMISSION**35 CFR Part 111****Revised Shipping and Navigation Rules for the Panama Canal; Correction****AGENCY:** Panama Canal Commission.**ACTION:** Final rule; correction.

SUMMARY: This document corrects the effective date contained in the final regulations implementing Revised Shipping and Navigation Rules for the Panama Canal which were published November 22, 1983 (48 FR 52703).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, (202) 724-0104, or Mr. John L. Haines, Jr., General Counsel, Panama Canal Commission, telephone in Balboa Heights, Republic of Panama, 011-507-52-7511.

Accordingly, the Panama Canal Commission is correcting 48 FR 52703 dated November 22, 1983 as follows: "EFFECTIVE DATE: December 22, 1983" is corrected to read "EFFECTIVE DATE: April 1, 1984."

Dated: December 1, 1983.

Michael Rhode, Jr.,
Secretary.

[FR Doc. 83-32414 Filed 12-5-83; 8:45 am]

BILLING CODE 3540-04-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[A-5-FRL 2333-5]****Approval and Promulgation of Air Quality Implementation Plans; Coke Batteries, Indiana****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA today is publishing rulemaking pursuant to section 110 and Part D of the Clean Air Act (Act) on a revision to the Indiana State Implementation Plan (SIP) to control particulate matter emissions from coke batteries located in the State of Indiana. In this notice, EPA is specifying those portions of the revision to the Indiana SIP which it is approving and disapproving.

DATE: This action is effective as of January 5, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for inspection:

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

United States Environmental Protection Agency, Region V, Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

Indiana State Board of Health, Air Pollution Control Division, 1330 West Michigan Street, Indianapolis, Indiana 46206

It is recommended that you telephone Robert B. Miller at (312) 886-6031 before visiting the Region V office.

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, (312) 886-6031.

SUPPLEMENTARY INFORMATION:**I. Regulatory History****A. Indiana's Initial Part D Submittals and EPA Rulemaking Action**

On June 26, 1979, the State of Indiana submitted to EPA proposed revisions of its SIP pursuant to Part D of the Clean Air Act (Act), as amended in 1977. The revision applied to areas of Indiana that had not attained the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO₂), Ozone (O₃), carbon monoxide (CO) and particulate matter (PM). These revisions included the coke battery regulation APC-9. As required by the Act, the purpose of these revisions was to implement measures for controlling the emissions of these pollutants in nonattainment areas and to demonstrate that these measures would provide for attainment of the NAAQS as expeditiously as practicable, but not later than December 31, 1982, for the primary standards or by December 31, 1987, under certain conditions, for ozone and carbon monoxide. The December 31, 1982 deadline which applied to all TSP implementation plans has passed. In addition, some of these revisions contained requirements to control emissions in areas which have either attained the NAAQS or have been designated as "unclassified," under Section 107 of the Act.

The requirements for an approvable SIP are described in a **Federal Register** notice published on April 4, 1979 (44 FR 20372), and are not reiterated in this notice. Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182) discussing, among other things, additional criteria for SIP approval.

On March 27, 1980, in the context of proposed rulemaking, EPA announced

receipt of the June 26, 1979 Indiana submittal, and the results of EPA's review of that submittal, and invited public comment (45 FR 20432). Excluded from the announcement, however, was EPA's review and proposed rulemaking for that portion of the Indiana submittal pertaining to particulate emissions from iron and steel sources, including coke battery sources.

B. Proposed Rulemaking on Iron and Steel Sources, Including Battery Sources

Indiana's initial strategy for controlling particulate emissions from iron and steel sources, including coke batteries, consisted of Indiana Regulation APC-3 (opacity), new Regulation APC-9 (coke batteries), and Regulation APC-23 (particulate matter). On July 3, 1980, EPA addressed iron and steel sources, proposing to disapprove revised Indiana Regulation APC-3, and new Regulation APC-9 (45 FR 45314). Since Regulation APC-23 as submitted by the State of Indiana on June 26, 1979, did not cover all of the nonattainment counties which contained iron and steel process sources, i.e., Lake, Marion and Vigo, EPA did not propose rulemaking for that regulation. In its **Federal Register** action, EPA discussed the history of the Indiana submission, the relevant Clean Air Act requirements and its applicable policies.

C. Additional Indiana SIP Submittals

On October 6, 1980, Indiana submitted another revised opacity rule, recodified as 325 IAC 5-1. This rule contained a number of new provisions, including opacity limits for non-stack sources of visible emissions. The State also submitted county-specific regulations as amendments to APC-23 (now recodified as 325 IAC 6-1) for Lake (325 IAC 6-1-10, 6-1-11), Marion (325 IAC 6-1-12) and Vigo Counties (325 IAC 6-1-13). Finally, Indiana made certain revisions on May 22, 1981, to coke battery rule APC-9, now recodified as Rule 325 IAC 11-3 (Rule 11-3). These revisions were submitted to EPA on August 27, 1981.

D. Reproposed Rulemaking on Non-Coke Battery Particulate Regulations

In light of these changes, EPA repropose rulemaking on March 3, 1982 (47 FR 9019), concerning Indiana's particulate rules for sources other than coke batteries. At that time, the Agency also indicated its intention to take separate action on Rules 6-1-10.1 and 6-1-11.1.

E. Reproposed Rulemaking on Coke Battery Regulation

On June 1, 1982, (47 FR 23773), EPA repropoed rulemaking on rule 11-3, including its effect on the Indiana Part D particulate control strategies in Marion and Vigo Counties (325 IAC 6-1-12 and 6-1-13, respectively). With respect to Lake County, EPA announced that it was reviewing a particulate control strategy which had been prepared by the Lake County Attainment Task Force and submitted informally to EPA by the State of Indiana. Since this strategy was intended to be incorporated into 325 IAC 6-1 (325 IAC 6-1-10.1, 6-1-11.1) and would include coke battery mass emissions limitations which reflected the requirements of Rule 11-3, the June 1, 1982 rulemaking would therefore encompass coke batteries in Lake County.

F. Final Rulemaking on Non-Coke Battery Particulate Regulations

On July 16, 1982 (47 FR 30973), EPA took final rulemaking action on Indiana's particulate rules for non coke battery sources. EPA approved the complete Indiana Part D plan for Clark, Dearborn, Dubois, St. Joseph, Vanderburgh and Vigo Counties, subject to certain enumerated conditions. EPA did not fully approve the Marion County Part D plan because there did not exist an approved Part D strategy for the coke battery sources in Marion County. EPA took final rulemaking action to redesignate that portion of Vigo County which contained coke battery sources, from primary non-attainment to attainment, and deferred rulemaking on the coke battery emission limitations for Vigo County. EPA took no rulemaking action on the Lake County particulate SIP strategy.

G. Today's Final Rulemaking on Indiana Coke Battery Regulation 325 IAC 11-3

In today's rulemaking action, EPA is specifying those portions of Indiana's rule for coke battery sources, Rule 11-3, which it is approving, disapproving or deferring action on for coke battery sources in Indiana. Because of certain deficiencies in Rule 11-3, non-attainment areas in Indiana which contain coke battery sources (other than Porter County) will continue not to have an approved strategy for particulate matter and growth restrictions under § 110(a)(2)(I) will continue in these areas. EPA is taking no action in this notice on opacity regulation 325 IAC 5-1 as it relates to coke battery underfire stacks and precarbonization towers, as the Agency announced on July 16, 1982 (47 FR 30972) that it is temporarily

deferring further rulemaking action on this regulation, pending modification of this rule by the State. Finally, EPA is taking no action today on Rule 6-1 as it applies to Lake County. Rulemaking on

this strategy will occur in a subsequent Federal Register notice.

The following Table 1 represents a summary of EPA's final action on Rule 11-3:

TABLE 1

Rule	Identification of rule	EPA final action
Section 1	Applicability	Approval.
Section 2(a)	Pre-Carbonization Emissions	Deferred.
Section 2(b)	Charging Emissions	Approval.
Section 2(c)	Charging Port Lid Emissions	Approval.
Section 2(d)	Offtake Piping Emissions	Approval.
Section 2(e)	Gas Collector Main Emissions	Approval.
Section 2(f)	Oven Door Emissions	Approval of 2(f) as it applies to Porter and Vigo Counties. Disapproval ¹ of 2(f) for remaining Indiana nonattainment areas.
Section 2(g)	Pushing Emissions	Disapproval. ¹
Section 2(h)	Quenching Emissions	Disapproval. ¹
Section 2(i)	Underfire Particulate and Sulfur Dioxide Emissions	Approval of 2(i) as it applies to particulate mass emissions for coke battery stacks in Marion, Porter and Vigo Counties. Deferred action on Lake County coke battery stacks.
Section 3	Coke Oven Identification	Approval.
Section 4(a)	Inspection Procedures for Charging	Approval.
Section 4(b)	Inspection Procedures for Topside Emissions	Approval.
Section 4(c)	Inspection Procedures for Oven Door Emissions	Approval.
Section 4(d)	Test Methods	Approval with the understanding.
Section 4(e)	Inspection Procedures for Gas Collector Main Emissions	Approval.
Section 5	Compliance Schedules	Approval.
Section 6	SIP Revision	Approval.

¹ Federal SIP regulation APC-3, as federally approved on October 25, 1975 (40 FR 50036), and Federal SIP regulation 325 IAC 6-3 as federally approved on July 16, 1982 (47 FR 30972) will remain in effect. (On July 16, 1982 (47 FR 30972), EPA approved the recodification of Federal SIP Regulation APC-5 as 325 IAC 6-3, and also approved certain revisions to the original regulation).

Section IV of this notice includes an in-depth analysis of EPA's final action on each provision of Rule 11-3, as outlined in Table 1.

H. EPA's Continuity Policy

In general, a present federally approved SIP will remain applicable and enforceable until there is compliance with newly promulgated and federally approved regulations. Failure of a source to meet the present federally approved SIP regulations will result in appropriate enforcement action, including assessment of noncompliance penalties. Furthermore, if there is any instance of delay or lapse in the applicability or enforceability of the new regulations, because of a court order or for any other reasons, the present SIP regulations will be applicable and enforceable. Thus, applicable provisions of existing Federal SIP regulations APC-3 and 325 IAC 6-3 remain in effect in Indiana non-attainment areas for which EPA is today disapproving sections 2(f), 2(g), and 2(h) of Rule 11-3. (See footnote, p. 6).

The major exception to this rule is in cases where there is a conflict between the requirements of new regulations and the requirements of the existing regulations such that it would be impossible for a source to comply with the pre-existing SIP while moving toward compliance with the new

regulations. In these situations, the State may exempt a source from compliance with the existing SIP regulations. Such exemptions will be reviewed and acted on by U.S. EPA either as part of these promulgated regulations or as a future SIP revision.

II. Summary of Indiana's Approach To Control PM Emissions From Coke Batteries

A. Part D Requirements of the Clean Air Act

Part D of the Clean Air Act requires PM SIPs to include strategies and regulations adequate to insure attainment of the primary NAAQS as expeditiously as practicable but not later than December 31, 1982, and, in the interim, to provide reasonable further progress toward attainment through the application of reasonably available control technology (RACT) on stationary sources. EPA has defined RACT in the July 3, 1980 Federal Register (45 FR 45314) proposed rulemaking on Indiana regulations for the iron and steel industry, and refers interested persons to this notice. In that notice EPA has also clarified its interpretation of the burden placed upon States, pursuant to Section 172 of the Act, to submit regulations which represent RACT.

B. Indiana's Coke Battery Control Strategy

To satisfy its Part D obligations under the Act, and to control all coke battery sources in the State, Indiana has proposed a control strategy which consists essentially of Rule 325 IAC 11-3, formerly APC-9. This regulation establishes emission limitations and inspection procedures for all coke oven batteries for which construction or modification commenced prior to June 19, 1979, except where more restrictive new source requirements apply. For those batteries commencing construction or modification on or after this date, the State intends to establish the appropriate emission limits as conditions of construction and operating permits issued under Article 2 of its rules.

Rule 325 IAC 11-3 specifically sets out emission limitations and compliance timetables for the following coke battery emission points: Charging, charge port lids, offtake piping, gas collector mains, oven doors, pushing and quenching. The rule further provides inspection procedures and test methodologies to determine compliance. In regard to pre-carbonization emissions, Section 2(a) of the rule provides that particulate emissions from pre-carbonization towers shall be governed by 325 IAC 6-1, and that visible emissions from these sources will be controlled by 325 IAC 5-1. Similarly, Section 2(i) of the rule specifies that particulate emissions from coke battery underfire stacks are to be governed by the limitations determined pursuant to 325 IAC 6-2 for attainment and unclassified counties, and 325 IAC 6-1, for non-attainment counties. Visible emissions from underfire stacks are controlled by 325 IAC 5-1.

C. Criteria by Which EPA Reviewed Rule 325 IAC 11-3

Rule 11-3, as formally submitted to U.S. EPA on August 27, 1981, is intended to apply to all coke battery sources, regardless of the air quality designation of the area in which the battery is located. As explained below, EPA has evaluated Rule 11-3 as it applies to coke battery sources in Lake and Marion Counties in terms of Part D, RACT requirements and Section 110; Porter and Vigo Counties have been evaluated only in terms of Section 110.

1. Lake and Marion Counties

Lake and Marion Counties are designated in 40 CFR 81.315 (1982) as nonattainment for both primary and secondary particulate NAAQS. Regulations for these counties must

consequently meet the requirements of both Part D and Section 110 of the Act.

2. Porter County

On August 18, 1982, 47 FR 35965, that portion of northern Porter County which contains the County's only coke battery sources, was redesignated from unclassifiable to nonattainment for particulate matter (PM), based on monitoring data showing violations of the NAAQS. This rulemaking became effective on September 17, 1982. In the August 18, 1982 rulemaking, EPA explained that regulations for Porter County would be required to meet Part D of the Act on a specified schedule which extends beyond the December 31, 1982 deadline in the Clean Air Act. Therefore, for the purposes of today's rulemaking, EPA will be judging the provisions of 11-3 as it applies to Porter County only by the criteria enumerated in section 110 of the Act, including the requirement to attain the NAAQS as expeditiously as practicable. The deadline for submitting provisions that meet the Part D requirements has not yet passed.

EPA reiterates that the State is now under an obligation to devise a Part D plan for Porter County. The State must evaluate EPA's RACT analysis of the various provisions of 11-3 as outlined in the technical section IV of this notice. Where EPA today notes RACT deficiencies in 11-3 and disapproves portions of 11-3, (for Marion and Vigo Counties) the State, in accordance with Part D of the Act, must submit corresponding new regulations for Porter County which represent a RACT level of control. The August 18, 1982 rulemaking required that these revisions be submitted no later than September 17, 1983, and that they provide that compliance be achieved as expeditiously as practicable, but in no event later than five years from the date of redesignation. In the interim, the pertinent portions of 11-3 will continue to apply in Porter County, including the associated compliance schedules specified in the regulation.

In those cases where EPA today disapproves portions of this regulation because of enforceability problems, the current SIP regulations, APC-3, as federally approved on October 28, 1975 (40 FR 50033), and 325 IAC 6-3, as federally approved on July 16, 1982 (47 FR 30972), will remain in effect and enforceable in Porter County. (On July 16, 1982 (47 FR 30972), EPA approved the recodification of Federal SIP Regulation APC-5 as 325 IAC 6-3, and approved certain revisions to this regulation).

3. Vigo County

On July 16, 1982 (47 FR 30972), that portion of Vigo County which contains the County's only coke battery sources was redesignated from primary nonattainment to attainment for particulate matter (PM), based on monitoring data showing no violations of the NAAQS. This rulemaking became effective on July 16, 1982. Coke battery regulations for Vigo County are only required, therefore, to meet the requirements of Section 110 of the Clean Air Act.

D. Public Comments Received on Indiana's Coke Battery Strategy

In this notice, EPA responds to all public comments which have been received on its proposed rulemaking of July 3, 1980 on Indiana Regulation APC-9 (45 FR 45314), and on its proposed rulemaking of June 1, 1982, on 325 IAC 11-3 (47 FR 23773). Voluminous comments have been received from Rooks, Pitts, Fullagar and Poust, as counsel for the United States Steel Corporation, the Jones & Laughlin Steel Corporation and the Youngstown Sheet and Tube Corporation, incorporating comments from the American Iron and Steel Institute (AISI); from Bethlehem Steel; from Inland Steel; from the law firm of Barnes & Thornburg; from Citizens for a Better Environment; and from the State of Indiana. These comments addressed the legal basis for EPA's proposed actions as well as the technical rationale for EPA's proposed actions. Accordingly, EPA will address legal and policy comments in Section III, entitled, "Comments Addressed to EPA Policy." Comments on EPA's technical basis for its rulemaking actions will be discussed in Section IV, entitled "Comments and Action on Proposed Rule 325 IAC 11-3."

III. Comments Addressed to EPA Policy

The following represent comments received from the public by EPA, and EPA's responses:

Comment: EPA's utilization of its "relaxation", "revocation", and "continuity" policies as criteria for approving Part D Plan revisions is unlawful. Further, if the revisions require attainment of the air quality standards by the statutorily mandated date, a State is free to choose any strategy to attain the standards, which may include the revocation or relaxation of pre-existing regulations.

Response: As discussed in the April 4, 1979 General Preamble to Part D rulemaking at 44 FR 20373-30274, and in the July 3, 1980 reproposal, if existing requirements could be relaxed or

superseded pending compliance with a new requirement, recalcitrant sources could avoid obligations established under the Act before enactment of the 1977 Amendments. These Amendments were intended to allow additional time for additional controls to be applied, but not to permit a relaxation of existing requirements. Thus, present emission control requirements were to be retained in order to prevent the operation of facilities without controls, or with less efficient controls while sources moved toward compliance with, or challenged, the new requirements. Furthermore, contrary to one of the commentator's contentions, the continuity policy does not freeze obsolete rules into a state plan because the existing rule remains in effect only until the source comes into compliance with the new rule.

As outlined in the General Preamble, there are certain exceptions to the policies discussed above. The exception most pertinent to today's action is that a State may submit a revocation of an existing requirement if the existing requirement conflicts with a new, more stringent requirement, making it highly impractical for a source to comply with the old requirement. The commentators do not contend that there is such a conflict between the existing requirements and the new requirements in Indiana.

Under the commentators' analysis, a submitted strategy could conceivably permit a State to delay the effective date of compliance with all air pollution regulations until the last permissible statutory attainment date of December 31, 1982. This, however, is plainly inconsistent with the Part D requirements for reasonable further progress and the general requirement for attainment as expeditiously as practicable. In enacting the 1977 Amendments to the Clean Air Act, Congress did not intend the 1982 attainment date to authorize relaxations or delays in compliance with existing requirements. As later explained by Representative Rogers:

The first suggestion was that the Act be amended to make clear that a revised attainment date under Section 172(a) would not be the basis for delaying the effective date of the emission limit for any source in effect prior to the adoption and submission of a plan revision under Part D. This Amendment was deemed unnecessary. Delays or relaxations of emission limits were not generally authorized or intended under Part D. (123 Cong. Rec. H 11958 daily ed. Nov. 1, 1977) (Remarks of Representative Rogers).

In sum, the policies to which the commentator objects are intended to assure that, pending compliance with

the revised SIP, the Part D revisions do not interfere with reasonable further progress toward attainment and maintenance of ambient air quality standards by relaxing or revoking existing state requirements. EPA's disapproval of Indiana Plan revisions which relaxed or revoked existing Indiana regulations is thus consistent with the Act.

Comment: EPA has no right to consider "enforceability" by reviewing State regulations for clarity and specificity.

Response: Section 110 of the Act generally requires that a plan be enforceable. See Sections 110(a)(1), (a)(2)(D). In determining whether a plan provision is enforceable, emission limitations and other requirements must be reviewed for clarity and specificity. Emission limitations and other requirements must be well defined, and must clearly state which sources and processes are being regulated, when the required actions are to be taken and by whom, and what constitutes compliance. In addition, the plan provision must specify any necessary test method by which compliance is to be determined and, if the provision requires compliance at a future date, it must contain an adequate schedule for compliance. See 44 FR 20372, April 4, 1979. The requirements for enforceability would not be satisfied by unclear or imprecise plan provisions. Vagueness as to regulatory requirements or applicability would make it difficult, if not impossible, to enforce regulations against specific sources.

Comment: Commentators have challenged EPA's use of certain technical support documents as a basis for its proposed rulemaking actions. They contend that EPA intends to impose its assessments of what constitutes RACT, as outlined in the technical support documents, upon the States without the accompanying procedural due process safeguards, such as public hearings on the data, which the commentators contend are regularly imposed by formal rulemaking requirements under the Clean Air Act and the Administrative Procedure Act.

They argue that RACT is defined in 40 CFR 51.1(o), and should be updated, in if necessary, through rulemaking, providing opportunity for public comment and judicial review. They further contend that the Agency is improperly using the SIP approval process to coerce the State of Indiana into adopting EPA's standards.

Response: This argument rests predominantly upon the fact that in its Notice of Proposed Rulemaking of July 3, 1980, 45 FR 45314, EPA stated:

Where a state proposes regulations which are not technically supported by U.S. EPA's data, the State must submit adequate data supporting its proposal as representing RACT.

EPA believes that commentators have misunderstood EPA's goal in developing a technical support docket. Under Section 172 of the Clean Air Act, each State is to develop a revised Plan for designated nonattainment areas. Each Plan must include sufficient information for EPA to evaluate whether such revised Plan meets the requirements of Section 172, including the requirement to adopt reasonably available control technology. See Section 172(b)(3). To review State submitted Part D Plan revisions, EPA has assembled a docket which contains the legal and technical rationales for agency action on proposed Part D Plan revisions. The data accumulated in the technical support portion of the docket to which commentators refer, consists of comprehensive iron and steel emissions data from facilities across the country. This data is valuable in analyzing the levels of emission control achievable for specific categories of sources within the iron and steel industry and is also useful in evaluating case-by-case RACT limitations in the event a State submits limitations which consider technological and economic feasibility.

In contrast to commentators' contentions, EPA does not suggest that emission limitations and standards reflected in these documents constitute absolute and mandatory RACT standards for the iron and steel industry. In the same July 3, 1980, Notice of Proposed Rulemaking referred to by the commentators, EPA explained its understanding of the Part D revision process and the uses to which it would put the technical support documents:

U.S. EPA believes the burden of demonstrating that a regulation represents RACT rests on the State. In reviewing a proposed SIP (Plan) revision to determine its adequacy, EPA can verify independently that the provisions in the State plan represent RACT. Although EPA has not specified uniform RACT standards for the iron and steel industry, it has collected data which reflects the emission limitations achieved by various iron and steel sources applying control technology. Where a State proposes regulations which are not technically supported by EPA's data, the State must submit adequate data supporting its proposal as RACT.

The intention is that the State must submit technical justification to support RACT determinations. EPA then considers the information submitted by the State, together with the data in the technical support docket and any public

comments received to determine whether the specific regulatory revision satisfies the requirements of the Act for RACT. EPA has no intention of coercing a State into accepting a particular standard or technology.

EPA further clarified its position regarding the technical support documents in a September 8, 1980, Federal Register Notice of Availability of a Guidance Document, 45 FR 59198:

By gathering and evaluating the available data, U.S. EPA does not intend to set uniform RACT standards which the States are required to adopt, and the summary should not be so construed. The limitations and standards summarized in the table should not be regarded as categorical RACT requirements for iron and steel sources, but solely as guidance which EPA will utilize as the starting point in its review and evaluation of a State's submission. The State may develop its RACT requirements independently of EPA's guidance. * * * EPA * * * will carefully review and evaluate in detail the State's analysis to determine whether it in fact supports the State's proposed RACT requirements.

In the instant case, EPA notes that the State of Indiana submitted no technical documentation in support of its proposed standards. If such data had been submitted, consistent with the position announced in the Notice of Availability, EPA would naturally have given great weight to this information. Because Indiana did not submit such data, EPA relied heavily on its internally developed guidance docket. In a similar situation involving EPA's Part D rulemaking on the State of Michigan's iron and steel regulations, the U.S. Court of Appeals for the 6th Circuit in *National Steel Corporation, Great Lakes Division v. Gorsuch*, 700 F.2d 314, 323 (6th Cir. 1983), upheld EPA's reliance on its internally-developed technical support documents. The Court held that:

The EPA can only be in a position to fulfill its statutory obligations if it has some degree of expertise, or some way of getting that expertise, regarding RACT in each relevant industry. In the instant case, Michigan did not supply detailed information in support of its RACT determinations. Where a state fails to supply the information necessary for a proper evaluation by the EPA, the EPA must be free to use its own acquired knowledge. In such circumstances, we readily find that the EPA has neither overstepped the bounds of its authority nor acted unreasonably.

In its review and action on Indiana's coke battery regulations, EPA has followed all applicable procedural requirements. While the Clean Air Act specifies that U.S. EPA is required to pursue formal rulemaking pursuant to Section 307(d) for certain actions, no such requirement applies to agency action on state submitted

implementation plan revisions. Neither is the agency required by the Act to establish a rulemaking docket for its action in reviewing Part D plan revision submittals.

Procedural requirements for rulemaking such as agency action on State submitted plan revisions appear in the Administrative Procedure Act (APA), 5 U.S.C. 553(b). This provision requires publication of notice of the proposed rulemaking, including a statement of the time, place and nature of the proceedings, reference to the legal authority under which the rule is proposed, and either the terms or substance of the proposed rule or a description of the subjects and issues involved. In addition, the Agency is required to give interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments. The form and content of the several Federal Register notices pertaining to this rulemaking indicate that EPA has followed these procedures here.

Some comments asserted the necessity of revising 40 CFR Part 51.1(o), Appendix B of 40 CFR 51.1(o), entitled "Examples of Emission Limitations Attainable with Reasonably Available Technology". This appendix represents, by its own terms, examples and guidance only, and does not impose fixed RACT requirements. Appendix B, issued in 1971, states that it "sets forth emission limitations which, in the Administrator's judgment, are attainable through the application of reasonable (sic) available emission control technology." In other words, these referred to the state of the art as it existed in 1971, nearly six years before the problem of widespread nonattainment of NAAQS prompted Congress to enact Part D. Indeed, in its current review of Part 51 for possible revision, EPA is considering proposing to delete Appendix B because it is no longer technically current. Clearly, neither § 51.1(o) nor Appendix B was intended to prevent more effective technologies which evolved for particular industries and particular processes from being incorporated into RACT requirements.

In short, EPA is not bound in 1982 to accept the controls and levels of control mentioned in the general 1971 RACT examples as representing current RACT requirements for all processes and all industries, nor to update Appendix B to substantiate its RACT analyses.

Comment: EPA's definition of RACT includes considerations of technological and economic feasibility. The technical docket appears to include information on technological feasibility, but it

presents little or no data on economic feasibility.

Response: The data in the technical docket includes comprehensive iron and steel emissions data representing actual control levels achieved in facilities across the country. Such levels consistently achieved in actual use can, as a general matter, be presumed to be economically achievable. EPA is not aware of specific supporting data in the record, as presented either by the State of Indiana or any of the commentators, that would lead to a reasoned conclusion that Indiana coke batteries should be distinguished economically, geographically, technically, or otherwise from those sources identified in EPA's technical guidance docket.

One commentator also complained that EPA was not reviewing the State's proposals with the broad deference commentators read into EPA's early guidance. That guidance was intended (and continues) to permit the State to tailor regulations to the specific characteristic of its industrial community. However, it was not an invitation to ignore the large body of data from numerous states in which coke batteries are located, demonstrating achievable control limitations.

The approach taken was to compare the State's proposed requirements with the known performance of better control systems in place at a broad range of facilities in many locations. Though a reference point is established, EPA's approach includes the flexibility to analyze economic or sociological factors which support variations from the conclusions it has reached. In other words, EPA will consider any State proposal differing from that based on its purely technical analysis where the State has articulated the site specific considerations justifying a different conclusion. Here, however, the State has failed to articulate such considerations.

Comment: The RACT technical docket on which EPA relies is not part of the State hearing record, and was not made available to the State until after Indiana regulations were promulgated. Therefore, this docket should not be considered and EPA's rulemaking actions should be based exclusively on the State hearing records, including the testimony of EPA representatives at the State public hearings.

Response: In assigning EPA the task of reviewing SIP revisions, Congress plainly intended that EPA make an independent, neutral and informal assessment of the revisions. In reviewing the adequacy of the submittals here, EPA must be free

therefore to draw on its own expertise in determining if each submittal is approvable. To this end, the RACT technical docket was compiled to permit EPA to evaluate proposed Part D revisions, such as those proposed by Indiana, in terms of Section 172 of the Act.

Even before Indiana formally submitted its original coke battery regulation in 1979, EPA was extensively involved in reviewing and commenting on the approvability of that regulation. As the Agency reviewed draft and final iron and steel regulations for Indiana and other States, it became clear that available technical data should be assembled to facilitate EPA's review, and to technically support its rulemaking actions.

In Indiana, the dissemination of technical iron and steel data to the State was accomplished on several occasions prior to the publication in the *Federal Register* of the notice of availability of the September 8, 1980 RACT guidance documents. As an example, on April 24, 1979, two months before Indiana submitted its coke battery rule to U.S. EPA for review, and prior to the May 23, 1979 public hearing on APC-8, EPA transmitted to the State approximately 750 pages of technical support for RACT for iron and steel sources, including testimony at public hearings, visible and mass emission limitation test data, relevant information from topical literature and special studies. The compilation of data made available to the public in September of 1980 merely represented the latest updating of the Agency's regular internal evaluation of the achievable levels of control for the iron and steel industry.

The summary of emission limitations in the technical guidance document does not establish regulatory requirements. Rather, as stated above, it represents guidance for use in the development and evaluation of State Implementation Plan provisions for iron and steel sources in the context of the RACT requirements of the Act. A State may develop its RACT requirements independently of EPA's guidance. 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.

Furthermore, contrary to the commentator's contention, EPA has not violated any procedural requirement of either the Clean Air Act or the Administrative Procedure Act in relying upon this information which is a part of the rulemaking docket on this action. There is no requirement in either Act

which restricts EPA's analysis to the technical support which comprised the State hearing record. The only pertinent requirement which is imposed upon the Agency is that members of the public must have access to the materials upon which the Agency relied in its rulemaking.

In this case, while the technical support docket was not available until September 8, 1980, several months after EPA's initial rulemaking on the coke battery regulation, EPA extended the public comment period on the coke battery notice until October 17, 1980, to provide additional time for interested parties to review this data. In addition, sources in Indiana have had ample opportunity to publicly comment on the September 1980 RACT guidance. In the first instance, Indiana revised its coke oven battery rule on May 22, 1981, and interested sources had the chance to participate in a public hearing on January 26, 1981, four months after the RACT guidance became available. In the second case, as a result of the submittal by Indiana of a revision to its coke battery rule, EPA decided to repropose rulemaking action on this rule, and published a reproposal on June 1, 1982. Comments were solicited on this notice and several commentators took the opportunity to supplement previous comments or submit new comments.

Comment: EPA improperly failed to explain how the material was chosen for inclusion in the technical support portion of the rulemaking docket, to articulate the specific data in the technical support portion of the rulemaking docket upon which EPA relied for its selection of emission limitations in the summary table, and to provide an explanation of why these limitations were determined to be "generally" achievable in the steel industry. It is further alleged that much of the support documentation is unreliable data in that it represents information derived from pilot processes, special emission testing procedures other than standard methods, tests on brand new equipment, etc., rather than from facilities operating under normal production conditions. Finally, several commentators have suggested that EPA apparently excluded certain relevant data.

Response: On September 8, 1980, EPA announced that RACT guidance for the iron and steel industry was available for public review. EPA indicated that it had collected and evaluated a voluminous amount of data that reflected levels of performance achieved by various iron and steel sources applying control technology believed by the Agency to be generally available on a retrofit basis. In

general, determinations of RACT—level technology were made on the basis of known performance of the better control systems in place at many facilities in various locations, taking into account economic and technological feasibility.

Although EPA acknowledges that the technical support portion of the rulemaking docket is voluminous, EPA has organized the docket in such a manner as to facilitate an understanding by the public of the specific data which formed the basis for EPA's individual RACT determinations. EPA has indexed all of the data by process category and, in addition, it has indexed each process by the emission points therein.

Commentators have not supported their assertion that the data in the docket is not representative of existing iron and steel-making facilities, nor that EPA has excluded any particular data, except as noted below regarding door visible emission data. They have not identified any specific test data they considered to be deficient, or that had been excluded by EPA. Furthermore, review of the docket will confirm that in all cases where U.S. EPA's disapproval or conditional approval of a State proposal was based on a determination that a more stringent limitation was generally achievable, U.S. EPA relied on data in the docket from testing of existing, retrofitted full-scale plants.

Comment: EPA's proposed rulemaking is a violation of Section 110(a)(2) and (a)(3) of the Act because neither the Indiana revisions nor the Indiana SIP requires source monitoring and reporting provisions. The commentator further claimed that in light of this deficiency, the Administrator has a duty under Section 110(c) of the Act to promulgate such regulations.

Response: Under § 110(a)(2)(F) of the Clean Air Act, one of the criteria for SIP approval is that the Administrator must determine that the plan contains requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources and for periodic reports on the nature and amounts of such emissions. As a part of the original Indiana State Implementation Plan, the State submitted, and EPA approved, Rule 325 IAC 3-1 (formerly APC 8). The regulation is entitled "Continuous Monitoring of Emissions" and includes monitoring requirements for fossil fuel-fired steam generators of greater than 250 MM/BTU per hour, nitric acid plants of greater than 300 tons per day production capacity, sulfuric acid plants of greater than 300 tons per day production capacity, and certain petroleum refinery catalyst regenerators.

These four source categories were identical to those listed in EPA's regulations specifying minimum emission monitoring requirements for State SIPs in 40 CFR Part 51.19, Appendix P.

The State of Indiana has not incorporated into its coke oven battery regulation a requirement to implement a program of continuous monitoring for these sources. It is apparent that the State of Indiana has determined that 325 IAC 11-3 need not be supplemented for this particular source category, and that resources which are currently available to the State are adequate to ensure that sources maintain compliance with applicable limitations. The State intends to rely on its own enforcement authority to conduct regular visible emissions inspections of all battery emission points to ensure compliance.¹ The State will also review data from continuous monitoring devices installed in combustion stacks and pushing emission control systems by various coke operators pursuant to recent Federal Court Orders, and date which is obtained as a result of U.S. EPA observations of Indiana facilities. EPA has generally determined to defer to the State's judgment in this area, and thus declines to promulgate additional regulations on source monitoring for inclusion in the Indiana SIP.

Comment: EPA's use of its enforcement personnel in this rulemaking violates the Due Process Clause of the United States Constitution and the Administrative Procedure Act, 5 U.S.C. 554(d)(2), in that it is improper for personnel involved in the enforcement of air pollution control regulations to review the adequacy of proposed regulations.

Response: The commentators' remarks were specifically directed at what they perceived to be improper commingling of certain EPA enforcement and regulatory functions on the part of several enforcement attorneys who were responsible for the prosecution of a lawsuit against Bethlehem Steel Corporation for violations of air pollution requirements at Bethlehem's Burns Harbor, Indiana coke oven batteries, and who also participated in the preparation or the review of the rulemaking notices on Rule 11-3. Without citing any specific instances of impropriety, these commentators suggested that EPA's decision regarding approval or

disapproval of Rule 11-3 may have been influenced by a desire to preserve its established position in the enforcement action.

The separation of functions requirement of the Administrative Procedure Act (APA) applies only to cases of "adjudication," and even there only when the applicable statute mandates a hearing on the record. *Bethlehem Steel Corporation v. U.S. EPA*, 638 F.2d 994, 1008-09 (7th Cir. 1980). See also *Buckeye Power, Inc. v. EPA*, 481 F.2d 162 (6th Cir. 1973). Since the SIP review process is not "adjudication" and since the Clean Air Act does not require such a hearing for plan approvals under Section 110(a), the APA's separation of function requirement is inapplicable to this rulemaking.

EPA is unaware of any general prohibition, apart from the APA, against combining regulatory and enforcement functions and asserts that there is, in fact, a presumption of regularity and integrity in Agency proceedings that must be overcome by a litigant seeking to prove bias. *Bethlehem Steel Corporation v. U.S. EPA*, 638 F.2d at 1009. However, in the interests of responding to the commentators' concern, EPA has briefly analyzed today's rulemaking action as it affects the coke batteries in Burns Harbor and as it may have been affected by the litigation against Bethlehem.

EPA believes that the concerns raised in these comments have significant weight only to the extent EPA disapproves a state SIP revision, and have little force to the extent EPA approves such a revision. First of all, the commentators here expressly urged EPA to approve the regulations in question, and so cannot legitimately complain about any bias in favor of approval even if it existed. Beyond that, the central concern with "commingling" is that EPA might take regulatory action to preserve a position it has taken in an enforcement proceeding. But to the extent EPA approves a state SIP revision, it is taking an action that, if it bears on the enforcement action at all, can only serve to limit EPA's ability to continue to pursue certain aspects of the identical action.

In today's rulemaking, the Agency is disapproving only sections 2(g) and 2(h) of Rule 11-3, as they apply to Porter County where the Bethlehem Burns Harbor facility is located. These sections govern emissions from the coke oven battery pushing and quenching operations, respectively. The enforcement action against Bethlehem includes pushing but not quenching. In

the agency's view, the commentators commingling argument, therefore, reduces to an objection to EPA's disapproval of section 2(g) of Rule 11-3, which regulates pushing.

However, the record shows that this disapproval simply carried forward a well established and generally applicable EPA policy. The pushing section of Rule 11-3 must be disapproved because the rule is unenforceable without some methodology to measure the capture efficiency of a pushing emissions control device installed pursuant to the rule. EPA's technical position on this point is consistent with EPA's past treatment of all coke battery sources throughout the United States and with the positions advanced by the Agency in similar rulemaking actions in Pennsylvania, West Virginia, Kentucky, Illinois, Ohio, and Michigan. EPA draws the public's attention particularly to rulemaking which occurred in the State of Illinois. See 46 FR 44172, 44178 (September 3, 1981).

In sum, the Agency has complied with the pertinent procedural requirements and the commentator has provided no information showing that participation by enforcement division personnel has biased the rulemaking. Thus, this action violates neither the Administrative Procedure Act nor the process clause of the Constitution.

Comment: In determining emission standards that represent RACT for existing sources in non-attainment areas, it is necessary to evaluate the most recent developments in control technology and operating and maintenance (O&M) practices. If a technology or operating and maintenance practice is used in normal operations, there must be a presumption that such practices are both technologically and economically feasible for that class of emission sources.

For an operator of a source to avoid the presumption that performance levels achieved at certain other sources are not technologically and economically feasible, he must show that his source is not part of the class defined by the sources for which new emission data were obtained.

Response: In making assessments of whether particular control technologies or operating and maintenance (O&M) practices fall within the general range of RACT level control, EPA carefully evaluates recent developments and state of the art technology as information becomes available. However, EPA does not mechanically apply a presumption based upon the extent to which such

¹ For many of the coke oven battery operations and emission points which generate particulate matter emissions, such as charging, topside leaks and doors, it is presently impossible to install the type of mechanical compliance monitors contemplated in section 110(a)(2)(F)(ii).

technology or practices have been adopted by the pertinent industry. Rather, EPA makes major efforts to re-examine its positions as new data becomes available, especially where it has information that a new technology or practice is particularly cost-effective. For example, EPA believes that it has been instrumental in encouraging the recent development of more cost-effective technology for the control of particulate emissions from blast furnace casthouses despite the fact that such techniques had very limited application in the American steel industry when they first came to the attention of the Agency.

This approach assures the Agency and the public that the Agency's RACT determinations not only take new information into account, but also that any new information used in determining emission standards that represent RACT is fully evaluated as to technological and economic feasibility. An unevaluated presumption would not provide this assurance.

Comment: The data in the technical support docket do not include information on the air quality impact of the various processes, controls or limitations as set out in the September 8, 1980 Guidance Documents which outline RACT levels of control. Consequently, EPA's basis for evaluating the State's submissions against the Part D RACT requirement was inadequate.

EPA disagrees; its basis was adequate even without that information. The State of Indiana submitted this regulation as part of a "RACT plus studies" particulate control strategy, as opposed to submitting the regulation as an integral part of a modeled attainment demonstration for the non-attainment areas of Indiana. As such, the regulation was intended, at a minimum, to implement levels of control that were reasonably achievable from just a technological and economic standpoint. EPA did not therefore review Rule 11-3 in terms of its ultimate ability to cure air quality deficiencies, because the State had made a commitment to conduct additional studies on the causes of particulate nonattainment, and to develop and to submit to EPA additional strategies and enforceable regulations adequate to demonstrate attainment of the NAAQS. The State has the burden of showing that a relatively lax degree of control nevertheless amounts to "RACT" because more stringent control is unnecessary to bring about timely attainment and maintenance. Here the State has made no attempt to meet that burden.

Comment: Neither section 110(a)(2)(I) nor Part D requires that state

implementation plans be revised to meet the requirements of Part D. Rather, a plan must be approved if it either meets the requirements of Part D or bans construction or modification of major emitting stationary sources after July 1, 1979. Thus, the Administrator may not disapprove a Part D revision for failure to meet the requirements of Part D if it otherwise complies with section 110 as to the construction ban.

Response: EPA notes that the State of Indiana has chosen to revise its plan to accommodate Part D of the Act and has represented to EPA that it has no desire to continue sanctions in Indiana. Therefore, discussion of any other option which may have been available to the State is inapposite to this rulemaking.

Comment: The Agency's action on the Indiana PM SIP revision is based in part on the invalid proposition that the SIP must include a requirement for RACT on all stationary sources. Rather, sections 172(b)(5) (which requires that SIP revisions identify and quantify emissions from major new or modified stationary sources) and 173(1) (which sets forth requirements for a new source permit program) provide states with alternative means of accommodating new source growth. This means that RACT is not required for all sources and that the definition of RACT should be left to the states, depending upon the type of new source program chosen.

Response: Although Sections 172(b)(5) and 173(1) contemplate new source growth, the overriding objective of the 1977 Amendments was to assure that States have regulations capable of ensuring the achievement of the primary NAAQS as expeditiously as practicable, but in no event later than by December 31, 1982. EPA interprets this to mean that all sources which are currently contributing to the nonattainment problem in an individual State must be controlled to the extent necessary to meet the NAAQS by the applicable attainment date. The commentator suggests that the level of control which constitutes RACT should depend upon the type of new source program selected by the State. The State could choose to impose very stringent limits on existing sources and provide a growth cushion satisfactory to obviate the need for offsets for new sources. Alternatively, the State could implement a SIP which ensures the attainment of the standards, but which provides no margin of growth, and consequently requires case-by-case offsets for new sources. EPA acknowledges that both of these two approaches are available to the State, but emphasizes that the approach or combination of approaches chosen must

lead to an attainment demonstration. Indiana has failed to submit an attainment demonstration for all non-attainment areas, and has therefore not met the threshold air quality requirements for either approach. Furthermore, the State of Indiana has submitted no technical justification to EPA that the State of Indiana has submitted no technical justification to EPA that the State has systematically imposed more stringent limits on certain sources in order to permit the imposition of limitations on coke battery sources, for example, which are less stringent than the range of RACT levels of control documented in EPA's iron and steel technical docket.

Comment: EPA's reliance on its "conditional approval" mechanism to approve revisions to the Indiana Plan is unauthorized in law. EPA must either approve or disapprove proposed revisions to the Indiana Plan. If disapproval is warranted, the Administrator has a non-discretionary duty to promulgate revisions to the Indiana Plan which meet the requirements of Part D of the Clean Air Act, which include a demonstration of attainment of the primary standards for particulate matter by December 31, 1982.

Response: This comment is immaterial. In today's rulemaking, EPA is not conditionally approving any part of Rule 11-3.

In any event, EPA disagrees with the commentators' contention that the conditional approval mechanism of approving revisions to the Indiana SIP is unauthorized in law, and that EPA must either approve or disapprove proposed revisions to the Indiana Plan. A discussion of conditional approval and its practical effect appears at 44 FR 38583, July 2, 1979, and 44 FR 67182, November 23, 1979. In the past, EPA has approved revisions to a State's plan which were in substantial compliance with the requirements of Part D of the Act, provided that noted deficiencies were to be remedied within a prescribed period of time. This policy of conditional approval has recently been upheld by U.S. Courts of Appeals in the Second and Fifth Circuits as a reasonable interpretation of the Clean Air Act. See *The Connecticut Fund for the Environment, Inc., v. Environmental Protection Agency*, 672 F.2d 998; and *City of Seabrook, Texas, v. Environmental Protection Agency*, 659 F.2d 1349.

In *Seabrook*, the Court emphasized the important policy considerations which supported EPA's decision to conditionally approve portions of the Texas SIP. The Court indicated that

when the goals of the Clean Air Act could be met by State revision or by federal promulgation, that it was reasonable for EPA to permit the State to proceed to make the requisite changes. The Court noted that " * * * we find it unlikely that Congress intended the imposition of a federal plan to be preferred to a commitment by the state to make the needed modifications." *Seabrook*, 659 F.2d 1349, 1357.

Comment: In gathering coke oven battery door visible emissions data for the technical support docket, EPA has excluded very high visible emission readings which were attributable to malfunctions. At the same time, EPA is planning to disapprove the Indiana regulation which allows malfunction exemptions. (325 IAC 1.1-5, formerly APC 11). By disapproving the door limit in 11-3 on the basis of data that does not consider malfunctions, and simultaneously disapproving the malfunction exemption regulation, EPA has attempted to impose upon industry an impossible standard to meet.

Response: This comment was received in response to EPA's July 3, 1980 rulemaking wherein EPA proposed to disapprove that portion of 11-3 which governed visible emissions from coke battery doors. The comment also reflected EPA's March 27, 1980 (45 FR 20431) rulemaking where the Agency proposed to disapprove Indiana's malfunction regulation. Since that time, the State of Indiana has revised its malfunction regulations to respond to EPA's concerns. Indiana submitted the revised regulation on January 21, 1981, and EPA proposed to approve it on December 3, 1982 (47 FR 54476). It appears that the basis for commentators' concern about the availability of a malfunction exemption to be used in conjunction with a door standard no longer exists.

Regarding the commentators' objection to the exclusion of malfunction data in the RACT iron and steel technical support docket, EPA's intent was to include data which was generally based upon good to superior performance at sources applying reasonably available control technology. The emphasis was on ascertaining that level of control which was generally achievable assuming diligent efforts by source operators. Occasionally, even at model facilities, significant excursions beyond RACT levels of control will occur, due to malfunctions. However, EPA did not believe that it was useful to factor into its data bank those very high visible emissions readings attributable to malfunctions, where they were not

representative of the typical performance of individual facilities.

Comment: EPA should have taken final rulemaking action on 325 IAC 11-3 within four months of the June 26, 1979 receipt of the original version of the rule. EPA should immediately and unconditionally approve 325 IAC 11-3 as the sole SIP requirements for coke ovens with an effective date of October 26, 1979. Commentator alleges that EPA's June 1, 1982 rulemaking on 325 IAC 11-3 (47 FR 23773) is the Agency's first action on this regulation as it affects Porter County, Indiana.

Response: EPA does not agree with the commentator that the Clean Air Act requires the Administrator to act on revisions to a State Implementation Plan within four months of the date of submittal. Section 110(a)(2) of the Act indicates that the Administrator must take rulemaking action within four months after the date required for submission of a plan under § 110(a)(1). Section 110(a)(1) refers exclusively to the original plans which were to be submitted by the States within nine months after the initial promulgation by the Agency of primary and secondary ambient air quality standards.

EPA cannot "immediately and unconditionally approve 325 IAC 11-3 as the sole SIP requirement for coke ovens with an effective date of October 26, 1979" because the rule contains certain deficiencies which are enumerated in great detail in today's rulemaking package. Furthermore, the Indiana coke battery rule which was designated as APC-9 and submitted to EPA for approval on June 26, 1979 has been superseded in Indiana by rule 11-3, which was not submitted for EPA review until August 27, 1981.

EPA agrees that the June 1, 1982 rulemaking was the Agency's first action on Rule 11-3, as submitted by Indiana on August 27, 1981. EPA acknowledges that the delay was due, in part to the necessity for re-evaluating certain of the positions taken by the Agency in the July 3, 1980 Notice of Proposed Rulemaking, as a result of public comments received.

IV. Comments and Action on Proposed Rule 325 IAC 11-3

Indiana's Coke Battery Rule, APC-9, was originally submitted for U.S. EPA approval as an SIP revision on June 26, 1979. On July 3, 1980 (45 FR 45314), U.S. EPA proposed to disapprove this rule. On May 22, 1981, the Indiana Air Pollution Control Board amended APC-9 (recodified as Rule 11-3). The Board formally submitted the new rule on August 27, 1981. On June 1, 1982 (47 FR 23773), U.S. EPA proposed action to

conditionally approve this rule. Following is an analysis of U.S. EPA's final action on each provision of Rule 11-3, including a discussion of all technical comments received in response to the July 3, 1980 and the June 1, 1982 Federal Register notices announcing U.S. EPA action on these rules.

Rule 325 IAC 11-3

Section 1. Applicability.—This section, which Indiana submitted to EPA subsequent to the Notice of Proposed Rulemaking, provides that the provisions of Rule 11-3 shall apply to all coke batteries in Indiana for which construction or modification commenced prior to June 19, 1979. Emission limitations for batteries, the construction or modification of which commenced after June 19, 1979, would be established as permit conditions pursuant to the provisions and requirements of 325 IAC Article 2 (Permits and New Source Review).

Discussion: One commentator felt that Rule 11-3 should be disapproved to the extent that it contains provisions which are less stringent than provisions which were set out in permits issued to coke batteries prior to June 19, 1979. EPA notes that permit conditions for new sources operate independently as requirements of a State Implementation Plan. See 40 CFR § 51.18, § 52.02(d), § 52.23. A State permit is that requirement of the SIP which is uniquely applicable to the source for which it is issued, and it is not superseded by the terms of regulations generally applicable to other sources. EPA therefore believes that Section 1 of 11-3 is approvable.

Action: Approval of Section 1.

Section 2. Emission Limitations.

(a) Pre-carbonization Emissions.—This section provides that particulate emissions from pre-carbonization towers shall be determined by referring to 325 IAC 6-1, and that visible emissions from such sources shall be governed by 325 IAC 5-1.

Discussion: On July 3, 1980, EPA proposed to disapprove the June 19, 1979 version of APC 9 for a series of specifically enumerated deficiencies which were unrelated to 2(a). EPA received no comments on Section 2(a). The only precarbonization towers in the State of Indiana are located in Lake County. EPA is still reviewing the Lake County strategy portion of Rule 6-1, and will be taking separate action on this strategy in a later rulemaking notice which will also address the issue of particulate emissions from precarbonization towers. Concerning visible emissions from these units, EPA

will also be taking separate rulemaking action on Rule 5-1, which will address the acceptability of the visible emissions standards for precarbonization units.

Action: Deferred on Section 2(a)

(b) *Charging Emissions.*—This section contains interim and final visible emission limitations for the charging operation, and associated compliance schedules for meeting each of four increments of progress. The regulation requires final compliance on and after July 1, 1982, with a final standard which prohibits visible emissions for more than a cumulative total of 125 seconds during 5 consecutive charging periods. One charge out of 20 consecutive charges may be excluded from the total seconds of charging emissions in accordance with procedures set out in the rule.

Discussion: In considering appropriate action on this section, U.S. EPA evaluated the stringency of the emission limitations required to be achieved, as well as the compliance schedules by which sources were to achieve compliance. In its July 3, 1980 rulemaking notice, 45 FR 45314, U.S. EPA proposed to disapprove the June 19, 1979 version of APC-9 because, *inter alia*, the compliance schedules in the regulation permitted sources to delay compliance unnecessarily for certain coke oven emission sources including the charging operation, lids, offtake piping, collector mains and doors, to July 1, 1982. EPA found no deficiency in the actual charging visible emission limitation.

EPA received comments regarding the length of the compliance schedules from the State, the steel industry and a citizens group. The State and the industry insisted that additional time was required to meet what the State construed to be "new" limits, and that the Clean Air Act allows states to give additional time to sources to achieve compliance on a consistent basis with new limits. The citizens group argued that additional time was unnecessary and could not be permitted according to Section 172 of the Clean Air Act, which requires the implementation of RACT as expeditiously as practicable.

Although EPA does not agree that Indiana's new standards impose more stringent requirements than the existing SIP, for a number of reasons EPA reconsidered its position, and on June 1, 1982, 47 FR 23773, repropounded action on the coke battery rule, and proposed to approve the schedules. EPA recognized that Rule 11-3 established meaningful interim compliance dates for achieving interim reductions which represented reasonable further progress toward attainment of the standards, as required by Section 172(b) of the Clean Air Act.

EPA further indicated that disapproval of these dates, and the subsequent rulemaking that a disapproval would necessitate, might delay final compliance, and would therefore violate the intent of Section 172 of the Act. Finally, EPA did not believe, from a practical point of view, that it could publish its final rulemaking action on this regulation before the July 1, 1982, final compliance date in the regulation. EPA believes that for all of the above reasons, final approval of these schedules is justified.

Regarding the actual charging standard, U.S. EPA has received mixed comments concerning the representativeness of the 125 seconds in five charges standard (with exemption for 1 charge in 20) as RACT. Comments from steel industry sources support the 125/5 (1 in 20) standard. However, these commentators also refer to earlier remarks made by U.S. EPA in the context of rulemaking on iron and steel regulations in the State of Illinois (45 FR 50825), July 31, 1980, in which U.S. EPA suggested that an appropriate RACT standard for charging actually constituted a range of numbers of from 90-125 seconds for 5 charges. These commentators believe that this range represents a degree of control more stringent than RACT, although, as previously indicated, they support the 125/5 (1 in 20) limit contained in the Indiana regulation.

The citizens group insists that the limit of 125/5 (1 in 20) does not equate to RACT stringency, and recommends that a standard of 100/5 (1 in 20) be substituted. It asserts that this alternate standard is supported by performance data obtained at U.S. Steel facilities in Clairton, Pennsylvania; Gary, Indiana; and Fairfield, Alabama; at CT&I in Pueblo, Colorado; at Interlake in Chicago, Illinois; and at Kaiser Steel in Fontana, California.

EPA has carefully considered the commentator's point regarding the stringency of this standard. EPA notes that where the Agency has made independent evaluations of RACT levels of control, the conclusions have generally been expressed in terms of a range within which a source may operate and still be achieving RACT levels of control. In EPA's judgment, the State of Indiana has submitted an approvable regulation which specifies a level of control that falls within the range that is acceptable to EPA. EPA does not, however, disagree that certain sources may be capable of achieving levels of control which are more stringent than the standard specified in the proposed Indiana SIP regulation.

EPA also received a comment from a citizens group to the effect that the exemption in the charging rule which permits one charge out of twenty consecutive charges to be exempt from the total seconds of charging emissions, is unwarranted. EPA will address this comment under Section 4(a).

Finally, EPA received a comment from a citizens group concerning the definition of charging. The commentator felt that the specific emission points addressed by the standard should be defined in Rule 325 IAC 1.1-1. EPA has carefully reviewed this comment and believes that the definition of charging in 1.1-1 is adequate when considered in conjunction with the references to charging in 325 IAC 11-3, the coke battery regulation. 325 IAC 1.1-1 defines charging basically as the introduction of coal into a coke oven. However, Section 2(b), of 11-3 actually enumerates the emissions which are to be limited by the charging standard. This provision indicates that visible emissions from the charging system, including any open charge port, offtake system, mobile jumper pipe or larry car, are to be controlled. Finally, Section 4(a) of 11-3 further clarifies which emissions are to be exempted from the charging limitation.

Rules 1.1-1 and 11-3 therefore provide a clear identification of what specific emission points are to be included within the definition of charging, which was the commentator's concern.

Action: Approval of Section 2(b).

(c) *Charging Port Lid Emissions.*—This section contains interim and final visible emission limitations for charging port lids, and associated compliance schedules for meeting each of four increments of progress. The regulation requires final compliance on and after July 1, 1982, with a final standard which prohibits visible emissions from more than three percent of the total charge port lids on any coke oven battery.

Discussion: In the July 3, 1980 rulemaking, EPA proposed to disapprove the June 19, 1979 version of APC 9 because, *inter alia*, the compliance schedules in the regulation permitted sources to delay compliance unnecessarily for certain coke oven emission sources including charging port lids. Concerning schedules for achieving compliance with limits specified in § 2, public comments received, and EPA's rationale for approving these schedules, see the discussion under § 2(b). EPA's rulemaking notices of July 3, 1980 and June 1, 1982 cited no deficiencies in the actual charging port lid visible emission standard, and EPA received no comments on the technical acceptability

of the charge port lid visible emission standard.

Action: Approval of 2(c).

(d) *Offtake Piping Emissions*.—This section contains interim and final visible emission limitations for the offtake piping, and associated compliance schedules for meeting each of four increments of progress. The regulation requires final compliance on and after July 1, 1982, with a final standard which prohibits visible emissions from more than ten percent of the total offtake piping on any coke oven battery.

Discussion: In the July 3, 1980 rulemaking, EPA proposed to disapprove the June 19, 1979 version of APC 9 because, *inter alia*, the compliance schedules in the regulation permitted sources to delay compliance unnecessarily for certain coke oven emission sources, including offtake piping. Concerning schedules for achieving compliance with limits specified in § 2, public comments received, and EPA's rationale for approval of these schedules, see the discussion under § 2(b). EPA's rulemaking notices of July 3, 1980 and June 1, 1982 cited no deficiencies in the actual offtake piping visible emissions limitations. Regarding the ten percent emission limitation from the offtakes, EPA received a public comment asserting that this standard did not represent RACT, and should not therefore be approved. The commentator presented a summary of visible emission offtake observations at the United States Steel, Clairton, Pennsylvania facility which demonstrated that these batteries were able to meet a five percent standard at the offtakes, and alleged that this standard had been met at other batteries as well.

EPA has carefully considered the commentator's data relating to the stringency of this standard. EPA notes that where the Agency has made independent evaluations of RACT levels of control, the conclusions have generally been expressed in terms of a range within which a source may operate and still be achieving RACT levels of control. In EPA's judgement, the State of Indiana has submitted an approvable regulation which specifies a level of control that falls within the range that EPA generally approves as RACT. EPA does not, however, disagree that certain sources may be capable of achieving levels of control which are more stringent than the standard specified in the proposed Indiana SIP regulation.

Action: Approval of 2(d).

(e) *Gas Collector Main Emissions*.—This section contains interim and final

visible emission limitations for the gas collector main, and associated compliance schedules for meeting each of four increments of progress. The regulation requires final compliance on and after July 1, 1982, with a final standard which prohibits visible emissions from more than three points on the gas collector main, excluding the connection with the standpipes.

Discussion: On July 3, 1980, EPA proposed to disapprove the June 19, 1979 version of APC-9 because, *inter alia*, the regulation did not contain an inspection procedure to determine compliance with the gas collector main emission limits. The only comment that EPA received was from the State of Indiana, which agreed with EPA's observation and committed to revise the regulation and include an inspection procedure for determining compliance at the gas collector main. On May 22, 1981, the Board amended the rule and added Section 5(e). EPA finds that both the visible emission standard and the inspection procedure are acceptable. On June 1, 1982, EPA repropose action on 11-3, and proposed to approve new paragraph 5(e). No comments were received on EPA's proposed action on 5(e).

Concerning schedules for achieving compliance with limits specified in § 2, public comments received, and EPA's rationale for approval of these schedules, see the discussion under § 2(b).

Action: Approval of § 2(e) and 5(e).

(f) *Oven Door Emissions*.—This section contains interim and final visible emission limitations for coke oven doors, and associated compliance schedules for meeting each of four increments of progress. The regulation requires final compliance on and after July 1, 1982, with a final standard which prohibits visible emissions from more than ten percent of the total coke oven doors, plus four doors, on any coke oven battery.

Discussion: On July 3, 1980, U.S. EPA proposed to disapprove the June 19, 1979 version of APC-9 because, *inter alia*, the Agency did not believe that Indiana's coke oven door rule represented RACT since it permitted an exemption from the visible emission limitation of ten percent of the doors, plus four doors (10%+4). Furthermore, the methodology for determining compliance with the 10% door standard was unacceptable since it was based upon counting the total number of doors on the battery rather than the total number of doors on ovens which are operational and which are therefore potential leakers. EPA noted that an exclusion of a maximum of two doors is supportable by available data.

EPA received numerous comments in response to its July 3, 1980 notice, from the State of Indiana, from the steel industry, and from a citizens group.

The State and the steel commentators argued that EPA's technical docket did not support the conclusion that 10%+two doors was achievable, or that it represented a reasonable level of control. These commentators also claimed that there was no valid air quality reason for distinguishing between total number of ovens and operating ovens. Further, the State felt that it would be difficult for an inspector to determine the operable status of the ovens. The steel industry commentators also alleged that there were deficiencies in EPA's methodology for data collection.

The citizens group supported EPA and felt that Indiana's proposed 10%+4 doors was not representative of RACT. They also recommended that the door standard specify that spare doors and seals should be kept on the premises at each facility and that the plant be required to maintain a door repair shop capable of prompt and efficient repair of doors.

Upon reconsideration of the available technical data, EPA proposed conditional approval, on June 1, 1982, of Indiana's 10%+4 doors standard. provided the rule were based on the total number of operating ovens, rather than the total number of ovens on the battery. EPA acknowledged that the difference between a two and four door cut-off translated to a 1-2% differential allowable door leak rate, depending upon the specific coke battery, and that the emissions rate equivalent to this differential was not important enough to warrant a change in the emissions standard. However, the proposal to accept the 10%+4 door standard was premised on a RACT standard based on total operating ovens, not total ovens. EPA noted then, as it does today, that a standard based upon total ovens has the potential to permit a significant relaxation of the 10%+4 standard under circumstances where cold ovens, which are not potential leakers, are nevertheless counted in the formula to determine compliance.

EPA acknowledges that the door data in the iron and steel technical docket does not indicate whether the ovens associated with the doors being inspected were operational or not. However, even without this data, it is clear that counting cold ovens in the calculation of percent doors leaking has the effect of permitting the operating oven leak rate to mathematically increase. In those instances where a

battery is being operated with a very significant number of ovens out of service, the standard as proposed by Indiana could allow the operating oven leak rate to increase by a third or a half, and could have an impact on air quality in the area, especially since the quantity of door emissions appears to increase exponentially and not linearly with the percentage of leaking doors. Further, because EPA's intent was to include data in the docket which was generally based upon good-to-superior performance at sources applying RACT levels of control, the likelihood that any appreciable portion of the data in the docket was collected on batteries with a significant number of non-operating ovens is remote. EPA sees no justification for permitting door leaks on a battery to be controlled less stringently simply because some ovens in that battery are not being operated.

The State of Indiana has not satisfied the condition for approval specified in the June 1, 1982 rulemaking. The section does not represent a RACT level of control for coke oven doors, which is required under the Clean Air Act for the nonattainment areas of Marion and Lake Counties which lack an attainment demonstration. EPA must therefore disapprove this section for these counties.

One commentator claimed that a visible emissions inspector would have difficulty in ascertaining the operational status of an oven. EPA does not believe that this represents a problem because the coke plant supervisor knows the operational status of each oven, and can impart this information to the inspector.

Action: Disapproval of 2(f) for the nonattainment counties of Marion and Lake. Federal SIP regulation APC-3 as approved on October 25, 1975 (40 FR 50036) and Federal SIP regulation 325 IAC 6-3 as approved on July 16, 1982 (47 FR 30972) will remain in effect. (On July 16, 1982 (47 FR 30972), EPA approved the recodification of Federal SIP Regulation APC-5 as 325 IAC 6-3, and also approved certain revisions to the original regulation). Approval of 2(f) for Porter and Vigo County sources, which are not presently required to implement regulations which ensure a RACT level of control.

(g) Pushing Emissions.—This section requires that all coke oven batteries be equipped with a device capable of capturing and collecting coke-side particulate matter such that the effluent gas emissions contain no more than 0.04 gram per 2.0 kilogram of coke pushed (0.04 lb/ton). In addition, the device must be designed and operated in compliance with an operating permit to collect 90% of the pushing emissions.

This section provides that if the construction and design of the device was approved by the Board in granting the permit, the device, if operated properly, would be assumed to be collecting 90% of the pushing emissions. This permit would be submitted to U.S. EPA as a SIP revision.

Discussion: On July 3, 1980, U.S. EPA proposed to disapprove the June 19, 1979 version of APC-9 because, *inter alia*, the rule was unenforceable since it did not provide a methodology for measuring the 90% particulate matter capture efficiency required in the rule for a pushing emissions control device in Indiana. EPA indicated that the State could correct this deficiency by developing and providing a method of observing and evaluating capture efficiency from the pushing operation, or alternatively, by substituting an opacity standard and an associated observation method.

In response to this notice, EPA received public comments from the State of Indiana, the steel industry, a law firm and citizens group. The State committed to specify that 90% capture would be defined as the construction and design which had been approved by the Board in granting the permit, on the assumption the device was operated properly, i.e., in compliance with permit conditions. These permits would be submitted to U.S. EPA as SIP revisions. On May 22, 1981, the State revised the regulation to reflect this commitment.

The steel industry commented that EPA had made no representation that any data in the record indicated that the corrections to the rule which were sought by EPA were feasible. They agreed that determining compliance with the 90% capture requirement was subjective, but claimed that one of EPA's suggested alternatives, that of an opacity standard, could be even more subjective. They claimed that because opacity is unrelated to the percentage of emissions escaping, requiring an opacity standard while rejecting the design efficiency standard is arbitrary and capricious.

Comments from the citizens group recommended the adoption of an opacity standard for the pushing operation which would prohibit emissions in excess of 20% opacity except for a total of 50 seconds averaged over five consecutive pushes. They also suggested that the mass particulate testing procedure for the outlet of the control device should include the front and back halves of the sampling train minus sodium sulphate, because a full train methodology would more accurately measure the quantity of particulate matter generated. They

supported EPA's conclusion that the regulation was unenforceable because measurement of capture efficiency was not feasible.

Following the Board's submittal of the amended coke battery rule on August 22, 1981, EPA repropose action on this regulation. EPA indicated that the modification to the rule was not satisfactory to cure the original enforceability problem. EPA noted that a design efficiency percentage provision would not constitute an actual enforceable emission limitation, and that this percentage was not a determinable quantity, even on a design basis because there is no method for verifying the 90% capture. Requiring that the Indiana Air Pollution Control Board review and approve the design and construction of a pushing emissions control system would not solve this deficiency.

Data in the technical docket (See item #IN070081.005) further explores the problems inherent in specifying a design capture efficiency in lieu of a more enforceable standard. Design capture efficiency is inadequate as a compliance standard for sources with pushing emission control devices which are already operational and which were not originally designed to meet a specific capture efficiency because the original design parameters may not reflect later modifications to control systems. This material notes that there were no operating pushing control systems prior to 1972, and that even assuming that reconstruction of the original design parameters were possible, because the systems which have been installed in the recent past were the product of significant design and engineering compromises, the original design might no longer validly represent the current operating characteristics of the system.

In response to the steel industry comments that there is no data in the record which supports the concept that the corrections suggested by EPA are feasible, EPA acknowledges that it does not believe that an enforceable method of observing and evaluating capture efficiency is available. However, EPA remains receptive to the development and submittal of such a methodology by the State, and emphasizes that it is the State's responsibility to promulgate enforceable regulations. There is adequate technical support in the docket for an enforceable opacity standard with an appropriate observation method to measure uncaptured emissions.

EPA has placed in the docket three recommended test methods (D, E, and F) for determining the opacity of pushing plumes. In addition, EPA has also

included in the docket reports of four pushing emissions opacity tests carried out using those methods (U.S. Steel, Fairfield; Jones & Laughlin Steel Corp., Pittsburgh; CF & I Steel; and Bethlehem Steel, Bethlehem, Pa.) EPA believes that these methodologies, when employed by visible emissions inspectors certified in accordance with U.S. EPA Reference Method 9, constitute objective and fair methods for determining compliance. Further, EPA believes that regulation of the opacity of a pushing plume is a way of controlling the amount of emissions released to the atmosphere. Data in the docket demonstrates that "green pushes," i.e., those which are opaque and produce copious quantities of visible emissions, also produce more particulate matter than do non-green pushes. The regulation of the visible portion of these pushes necessarily controls the mass element as well.

One commentator submitted a memorandum filed by the Department of Justice on behalf of EPA in a District Court enforcement action. The commentator suggests that the memorandum supports the proposition that an opacity standard is no more indicative of the pounds of emissions during pushing operations than the 90% capture requirement of the Indiana rule.

Actually, the memorandum states that opacity is not generally mathematically correlated to mass emissions, but recognizes that for particular sources such a relationship may be supportable. The memorandum further notes that generally, higher opacity is associated with higher mass emissions, but that the relationship is imprecise. The 90% capture requirement is acceptable conceptually but is meaningless in practice because there is no objective measurement method. It is undisputed that emissions are generated during the pushing operation. Opacity provides an objective standard which can be established by experience with proven control equipment. It serves as a means for both the regulator and regulated to assess the performance of control equipment and ultimately compliance. Since the record contains examples of reasonably available control technology for which opacity data has been accumulated, setting an opacity standard for the performance of such equipment is both possible and practical.

EPA believes the visible emission standard suggested for incorporation into the Indiana rules by the citizens group, that the opacity of emissions during pushing should not exceed 20% as an aggregate of 50 seconds per five consecutive pushes, constitutes an

acceptable example of RACT level of control for the pushing operation. Compliance with this standard could be determined by utilizing Method D, one of the U.S. EPA suggested methods for reading opacity from coke pushing operations.

The citizens group suggested that the method for determining compliance with a mass particulate standard during pushing should be to analyze particulate matter caught in the front and back halves of the sampling train. EPA believes that front half analysis is adequate to determine compliance with a mass particulate standard of .040 lb/ton of coke pushed, for a number of reasons. EPA agrees that a full train sampling methodology would capture some of the finer particulate matter which is not collected by the front half, but also cautions that the back half train also tends to collect materials which condense or react in the impingers of the back half and which do not exist as particulate matter in the ambient air. Therefore, while the front half analysis may permit a small quantity of very fine particulate to escape undetected, the back half catch is generally not totally representative of the particulate matter which exists in the atmosphere. Furthermore, EPA's Reference Method 5 does not specify a methodology for analyzing particulate matter captured in the back half of the sampling train. Finally, EPA notes that all of the performance tests upon which EPA and the States have relied in their determinations that certain standards are RACT and are achievable are based upon measuring particulate matter which is captured in the front half of the sampling train.

In additional comments submitted to U.S. EPA on September 1, 1982, the Indiana Air Pollution Control Board agreed to adopt a modification to Section (g) which would establish a 20% average opacity limitation for four consecutive pushing operations for all coke batteries located in areas designated by the Board as nonattainment for TSP. Compliance with this standard would be determined by averaging all of the 15-second interval opacity readings recorded during four consecutive pushing operations.

EPA has concluded that even if these comments were to be incorporated into rule 11-3, the rule would still not be fully acceptable, because the rule would only be enforceable for batteries located in areas which have been designated as nonattainment by the Board. The Clean Air Act requires, among other things, that EPA judge an emissions standard in terms of its enforceability. The State has

offered to promulgate an enforceable opacity standard for batteries located in areas designated by the Board as nonattainment. This commitment does not, however, rectify the enforceability problem for sources which are not located in these areas. In order for this regulation to be fully approvable, the scope of the regulation must also cover all coke batteries in all other areas of Indiana.

In regard to the proposed Indiana pushing opacity standard of 20 percent opacity, averaged over four consecutive pushes, EPA notes, based on its experience, that the duration of most pushes is from 45 seconds to 90 seconds. Only in very unusual circumstances will pushes exceed 90 seconds. EPA is therefore concerned that unless the number of individual 15-second readings constituting one push is limited, a source might have the ability to circumvent the stringency of the regulation by artificially extending the duration of the push in order to incorporate more low readings into the total number of readings to be averaged.

Therefore, EPA recommends that the State's opacity standard should be written such that the opacity for each push be defined as the average of the highest six consecutive observations during the push. If there are less than 6 consecutive observations during the push, that lesser number of observations should be averaged to determine the opacity during the push. Compliance would then be determined based on the average of four opacity values representing the average opacities of each of four consecutive pushes.

This addition to the suggested opacity standard would represent a satisfactory RACT level of control for the pushing operation, providing that it were applied to all nonattainment areas as designated by U.S. EPA. In the absence of such a modification to the Board's September 1, 1982 comments, RACT-level control stringency cannot be guaranteed in all applicable areas. However, the State has not formally revised this regulation to conform to its September 1982 comments. The section remains unenforceable for lack of a methodology for measuring the 90% particulate matter capture efficiency required in the rule for a pushing emissions control device.

Action: Disapproval of (g). Federal SIP regulation APC-3 as federally approved on October 25, 1975 (40 FR 50036) and Federal SIP regulation 325 IAC 6-3 as approved on July 16, 1982 (47 FR 30972), respectively, will continue to apply to emissions from coke oven batteries. (On July 16, 1982 (47 FR 30972), EPA approved the recodification of Federal

SIP Regulation APC-5 as 325 IAC 6-3, and also approved certain revisions to the original regulation).

(h) *Quenching*.—This section governs the coke quenching operation, and prohibits visible emissions during quenching unless the operation is conducted under a tower equipped with "efficient" baffles to impede the release of particulates into the atmosphere. In addition, the quench make-up water may not contain more than 1500 milligrams per liter total dissolved solids. The regulation permits the Board, on a case-by-case basis, to revise these quenching requirements if an individual facility is required to comply with conflicting Indiana Water Pollution Control requirements, upon consideration of a number of enumerated factors.

Discussion: On July 3, 1980, U.S. EPA proposed to disapprove the June 19, 1979 version of this section of APC 9 because, *inter alia*, the requirement of a total dissolved solids (TDS) content of as much as 1500 milligrams per liter in the quench make-up water was not RACT, and because the regulation did not adequately define the term "efficient baffles." On May 22, 1981, the Indiana Air Pollution Control Board amended Rule 11-3 and submitted the amended rule to U.S. EPA on August 27, 1981. One of the modifications made by the Board was to include a definition of "efficient baffles."

In response to the July 3, 1980 notice EPA received public comments from the steel industry. They felt that the lack of a definition of efficient baffles should not be sufficient grounds for EPA disapproval, and noted that Indiana had agreed to define "efficient baffles". They further believed that EPA's recommendation for no more than 1000-1325 mg/l in the quench make-up water was not consistent with reasonably available control technology, and that EPA had not defined the technology required to achieve the standard. They questioned whether the technical data supported the conclusion that the quantity of TDS in the quench water as applied to the coke was approximately two times the concentration of TDS in the quench make-up water, or that any relationship existed between TDS level in the quench water and the amount of particulate matter emitted from a quench tower. They also commented that the quenching standard should also vary depending upon the configuration of the tower, and the design of the nozzles and baffles.

EPA reviewed the comments to the proposed rulemaking as well as additional information, and on June 2, 1982, repropose action on Rule 11-3. EPA concluded that the modified Rule

11-3 satisfied the requirements of RACT, with the exception that there was no method submitted by which compliance with the standard was to be demonstrated. There was no definition of make-up water, no indication of the number of samples to be taken over a specified time period, and no method of analyzing for dissolved solids which would include water sampling location. EPA proposed to conditionally approve the regulation provided these deficiencies were corrected.

In response to the remaining public comments regarding the appropriateness of the Indiana quenching standard, EPA has reviewed and revised some of its original findings based upon a more comprehensive review of available quench test data. As suggested by commentators, EPA's recent studies have considered the effect on PM emissions of factors other than TDS, including the greenness of the coke, the design of the quench tower, the spraying method for quenching and the design of the baffles.

EPA has reconsidered its previous conclusion that the quantity of total dissolved solids in quench water is approximately two times the concentration of total dissolved solids in the make-up water. EPA has concluded that at the present time, the docket on this rulemaking contains insufficient data to fully assess the issue of concentrating effects. Consequently EPA is accepting a 1500 mg/l TDS in the quench make-up water as a RACT level of control.

EPA has not, however, altered its conclusion that there is a direct relationship between TDS level in quench water and the amount of particulate matter emitted from a quench tower. EPA has established that a linear relationship exists between air emission rates from a coke quench tower (in pounds per ton of coke), and the quality of water used for quenching coke (in milligrams per liter of total dissolved solids). This conclusion derives from studies of quench tower emissions based upon tests conducted at U.S. Steel Corporation plants in Lorain, Ohio and Gary, Indiana, and upon tests at the Dominion Foundry and Steel Company (Dofasco) plant in Hamilton, Ontario, Canada. Reports of these tests are contained in the technical docket on this rulemaking at pages 509305, 508869, 509249, 509337, 509943, and 510243 and in the quenching technical support document.

On a filterable solids basis (EPA Method 5, 40 CFR Part 60, App. A), an increase of 1000 mg/l TDS in quench water results in air emission rates of between 0.10-0.25 lb/ton of coal charged

into a coke oven depending on specific design factors (See Table 1 and Figures 3-5 of a review paper prepared by EPA and placed in this rulemaking docket). Therefore, EPA believes that controlling the TDS levels in water applied to coke affects air emission rates and that make-up water with a total dissolved solids value of no greater than that available from the nearest water source represents a standard achievable with reasonably available control technology.

In comments submitted to U.S. EPA on September 1, 1982, the Indiana Board agreed to adopt a modification to Section (h) by adding a paragraph 4(f). This paragraph indicates that quench water samples shall be taken at a point where no further additions to the makeup water can be made. Intervals at which samples are to be taken shall be determined by the Board, and sources which are subject to other sampling requirements are to meet the most stringent requirement. Water samples are to be analyzed for TDS in accordance with ASTM D 1688, Method A, with results expressed in milligrams per liter. However, Indiana has not yet incorporated these comments into 325 IAC 11-3, and has not submitted them to EPA for approval.

As indicated above, the version of 2(h) of 325 IAC 11-3 which is presently before EPA for approval is not adequate to satisfy EPA's concerns, as expressed in the proposed conditional approval of June 2, 1982. The regulation still does not specify the location for sampling or indicate the number of samples to be taken over a specified time period. In addition, there is no method submitted by which compliance with the standard is to be demonstrated. EPA must therefore disapprove Section 2(h).

Action: Disapproval of 2(h). Federal SIP regulation APC-3 as federally approved on October 25, 1975 (40 FR 50036) and Federal SIP Regulation IAC 325 6-3 as federally approved on July 16, 1982 (47 FR 30972) will continue to apply. (On July 16, 1982 (47 FR 30972), EPA approved the recodification of Federal SIP Regulation APC-5 as 325 IAC 6-3, and also approved certain revisions to the original regulation). EPA has determined that the application of APC 5 to the quenching operation will satisfy RACT requirements in that the standard derived from the application of the rule to the quenching operation falls within the range considered to represent a RACT level of control. However, because there is no test methodology which is specified in EPA Reference Methods 1-5 for the quenching operation, the Indiana Part D SIP will remain deficient until an appropriate

test method is enacted by Indiana and approved by EPA or until Indiana submits a revised Section 2(h) quenching regulation which satisfies EPA's concerns, and EPA approves such a revision.

(i) *Underfire Particulate and Sulfur Dioxide Emissions.*—This section provides that particulate and sulfur dioxide emissions from underfire stacks shall be limited by the emission limitations determined pursuant to 325 IAC 6-1 (formerly APC 23), 6-2 (formerly APC 4R) and 7-1 (formerly APC 13), respectively. Furthermore, visible emissions from any underfire stack shall comply with requirements set forth in 325 IAC 5-1 (formerly APC 3).

Discussion: On July 3, 1980, U.S. EPA proposed to disapprove the June 19, 1979 version of this section of APC 9 because, *inter alia*, the rule did not represent RACT for coke battery underfire stack particulate emissions for Vigo and Lake County coke battery sources. EPA took no action on the portion of the regulation which controlled visible or sulfur dioxide emissions from underfire stacks, since rulemaking on Rules 325 IAC 5-1 and 7-1 was to occur in subsequent rulemaking actions.

At the time of EPA's July 3, 1980 proposal, Rule 325 IAC 6-1 did not include Vigo and Lake Counties, and therefore, the appropriate limitation for coke battery stacks in these counties was contained in APC 4R, now codified as Rule 6-2.

EPA determined that the 0.3 gr/dscf limitation in 6-2 did not constitute RACT, and notified the State of Indiana that in order to correct this deficiency the State would be required to submit SIP revisions which constituted RACT for these underfire stacks. In EPA's technical judgment, underfire stack mass particulate emissions falling in the range of 0.020–0.050 gr/dscf represented a RACT level of control.

EPA received a comment from the steel industry to the effect that a coke battery stack standard of 0.020–0.050 gr/dscf did not constitute reasonably available control technology for stacks. EPA disagrees with this comment and notes that its technical support docket for coke battery stacks includes numerous tests conducted at batteries in Alabama, California, Colorado, Illinois, Indiana, Maryland, New York, Ohio, Pennsylvania, Texas and Virginia which produced results which fall within the RACT range.

These tests represented the following steel manufacturers: Armco, Bethlehem, CF&I, Jewell Coal & Coke, Jones & Laughlin, Kaiser, Keystone, Lone Star, National, Republic, Shenango, and United States Steel. EPA believes that

its docket contains stack tests from a fair cross-section of the industry, and from the eighteen states in which coke batteries are located.

EPA received a comment from a public interest group recommending that the method for determining compliance with the mass particulate standard for combustion stacks should be to analyze particulate matter caught in the front and back halves of the sampling train, because a full train methodology would more accurately measure the quantity of particulate matter generated. EPA has previously responded to this comment under Section 2(g) concerning Pushing Emissions, but wishes to add that the commentator failed to present information to substantiate the existence of significant condensable particulates (measured by back half analysis) in stack emissions. Further, EPA notes that widely utilized operating and maintenance practices designed to seal leaks in coke oven walls so as to improve the coking of coal serve, in part, to prevent the gaseous emissions which commentators anticipate will be captured in the back half of a sampling train.

Subsequent to the July 3, 1980 proposal, Indiana amended Rule 6-1 to include county-specific appendices for Lake and Vigo Counties. Following the submittal by Indiana or revisions to APC 9 on August 27, 1981, EPA repropoed action on 11-3. EPA noted that the Vigo County Appendix (325 IAC 6-1-13) contained an acceptable emission limit of 0.030 gr/dscf for the Indiana Gas & Chemical Co. batteries, and proposed approval for Vigo County. While the Marion County Appendix (325 IAC 6-1-12) did not contain any specific stack limits for the Citizens Gas and Coke Batteries, the general emission limitation of 0.03 gr/dscf in 6-1 applied, and EPA proposed to approve the rule for Marion County batteries. EPA proposed approval of the APC 4-R (6-2) non-RACT combustion stack limit for Porter County batteries, in accordance with Section 110 of the Clean Air Act. As indicated earlier, the requirement in Part D that plan regulations must incorporate RACT levels of control did not apply to Porter County at the time of EPA's June 1, 1982 reproposal. EPA took no action on the Lake County Appendix, because EPA was still reviewing a particulate control strategy which had been prepared by the Lake County Attainment Task Force and submitted informally to EPA by the State of Indiana.

Action.—Approval of 2(i) as it applies to particulate mass emission for coke battery stacks located in Marion, Porter and Vigo Counties. Defer action on Lake

County coke battery stacks because further rulemaking on all TSP sources in Lake County will occur in a separate rulemaking notice. EPA notes that coke battery sources in Porter County must meet RACT requirements in the future in accordance with the Federal rulemaking notice of August 18, 1982 (47 FR 35965).

Section 3. Coke Oven Identification.—This section provides that the identity of each coke oven shall be maintained in such a manner that it is easily and readily visible from the topside and on each coke and push-side on every battery.

Discussion.—On July 3, 1980, EPA proposed to disapprove the June 19, 1979 version of APC 9 for a series of specifically enumerated deficiencies which were unrelated to Section 3. EPA received no public or State comments on Section 3 following this rulemaking. On June 1, 1982, EPA proposed action to conditionally approve 11-3. No deficiencies were noted in Section 3, and no additional comments were received.

Action.—Approval of Section 3.

Section 4. Inspection Procedures for Coke Oven Batteries and Test Methods to Determine Compliance.

(a) *Charging Emissions.*—This section sets forth inspection procedures for determining compliance with Section 2(b) visible emissions limitations.

Discussion.—On July 3, 1980, U.S. EPA proposed to disapprove the June 19, 1979 version of APC 9 because, *inter alia*, there were significant deficiencies in the test methodology for determining compliance with the charging emissions standard. EPA noted that the outlined inspection procedure was unclear as to whether the recorded observations from an entire set of consecutive charges must be discarded when such observations are interrupted by an event not in the control of the observer, or whether only those individual interrupted charges must be discarded.

Further, EPA indicated that the provision in the regulation which permits the exemption of one charge out of twenty consecutive charges needed clarification for a number of reasons. The regulation was unclear as to what constituted consecutive charges for the purposes of performing visible emissions observations. Finally, there was no data reduction method specified for use in conjunction with the exemption. EPA indicated that the State must clarify whether it contemplated treating the exempted charge as if it had not occurred at all, or whether some other data reduction method was intended.

In response to this rulemaking, EPA received comments from the steel

industry, and from the State of Indiana regarding the clarity of the inspection procedures. The steel commentators alleged that the procedures were sufficiently clear. They claimed that because an interruption in observation caused by an event not in the control of the observer was not intended to interrupt an otherwise consecutive set of observed charges, there was no need to discard all of the data in that set and start all over again. In comments submitted by the State on October 7, 1980, the Board indicated that the regulation clearly stated that only the individual interrupted charge must be discarded. The State also committed to revise the regulation to satisfy EPA's concern that the procedure for determining compliance with the "one in twenty" exemption be clarified.

EPA also received a comment from a citizens group claiming that the "one in twenty" exemption was unwarranted because it permitted an allowance for "malfunctions" which could be otherwise eliminated by good operating and maintenance procedures.

EPA believes that it is justified in approving a "one in twenty" exemption, in conjunction with the charging standard of 125/5. In EPA's observations, most visible emissions from the charging operation statistically are short in duration, with an occasional charge recorded at values three or four times the norm. EPA believes that more emissions control is obtained by limiting the large percentage of charges to a small number of seconds per charge, and permitting an occasional charge to exceed some higher value, than by permitting the average of a set of charges to emit at a higher level.

This conclusion is based, in part, on EPA's experience which indicates that when emissions from the charging operation are relatively small in duration, they are relatively small in amount. The amount of particulate pollution produced by the charging operation is not, however, directly proportional to the number of seconds of visible emissions per charge. When the duration of emissions increases, the increase in pollution is more rapid than would be obtained if the relationship between seconds of emissions and pollution were more linear in nature. The one in twenty exemption, coupled with a satisfactory charging limit represents a practical compromise between stringency and achievability and takes into account the fact that occasional charges do exceed the standard, despite the best efforts of battery personnel to implement good operating and maintenance practices.

On May 22, 1981, Indiana revised Rule 11-3, and submitted this revision to EPA for approval on August 27, 1981. On June 1, 1982, U.S. EPA repropose action on 11-3, including a new paragraph which had been added to clarify the charging inspection procedure. U.S. EPA concluded that the additional language added to section 4(a) adequately clarified the exemption in conjunction with the October 7, 1980 letter from Indiana, and that the charging standard satisfied RACT. EPA proposed approval of this section. No additional comments were received on 4(a) following the June 1, 1982 rulemaking.

Action: Approval of Section 4(a).

(b) *Topside Emissions*.—This section sets forth inspection procedures for determining compliance with topside emission limitations contained in Sections 2(c) (charge port lids) and 2(d) (offtake piping).

Discussion: On July 3, 1980, U.S. EPA proposed to disapprove the June 19, 1979 version of this section of APC 9 because, *inter alia*, the rule had no limit to the number of charge port lids open during decarbonization which could be exempted from the recording of topside visible emissions. EPA also noted that Section 5(b) required that compliance inspections of topside emissions were to be conducted by an inspector who was to walk down the middle of the coke battery. EPA indicated that while it would not disapprove the provisions for this reason, it did believe that a potential safety hazard existed in this method of monitoring compliance.

In response to the July 3, 1980 rulemaking, EPA received comments from the steel industry alleging that EPA's request that the State establish a maximum number of charging port lids open for decarbonization was arbitrary, but that if a standard was to be established it should be no less than three ovens. On October 7, 1980, the State committed to include a limit of a maximum of three ovens. The State also committed to revise the inspection procedures to take into account EPA's concerns about safety. These commitments were subsequently incorporated in revised 11-3, submitted to EPA for approval on August 27, 1981. On June 1, 1982, EPA repropose action on revised 11-3, and proposed approval of 5(b).

Action: Approval of 4(b)

(c) *Oven Door Emissions*.—This section sets forth inspection procedures for determining compliance with Section 2(f) visible emissions limitations.

Discussion: On July 3, 1980, EPA proposed to disapprove the June 19, 1979 version of this section of APC 9 for a

series of specifically enumerated deficiencies which were unrelated to 4(c). EPA received no public or State, comments on 4(c) following this rulemaking. On June 1, 1982, EPA proposed action to conditionally approve 11-3. No deficiencies were noted in 4(c), and no additional comments were received.

Action: Approval of 4(c).

(d) This paragraph sets forth test methods for determining the amount of particulate matter emitted from a facility subject to a grain loading or process weight limitation. The methodology to be utilized is U.S. EPA Reference Methods 1-5, Appendix A of 40 CFR Part 60.

Discussion: On July 3, 1980, EPA proposed to disapprove the June 19, 1979 version of this section of APC 9 because, *inter alia*, Section 4(d) contained a typographical error in the citation to U.S. EPA Reference Methods 1-5.

The regulation cited Appendix B as the controlling method, but the correct citation was intended to be Appendix A. In addition, EPA noted that the regulation permitted the Board to approve alternate procedures other than Reference Methods 1-5 for determining the amount of particulate matter emitted from a facility. EPA indicated that such a provision ignored the language of 40 CFR 51.6(d) which obligates a State to submit to U.S. EPA any State action which purports to modify a SIP requirement. EPA stated that to correct this deficiency, Indiana had to make a commitment to ensure that any alternative Board testing procedures be submitted to U.S. EPA as a SIP revision. On October 7, 1980, the State of Indiana committed to correct the typographical error in the citation to Reference Methods 1-5. No other comments were received. On August 27, 1981, the State submitted to EPA for approval a revised Rule 11-3 wherein the typographical error had been corrected from Appendix B to Appendix A. On June 1, 1982, U.S. EPA repropose action on 11-3 including the revision to 4(d) which corrected the typographical error. EPA indicated that the State had corrected the typographical error to reference Appendix A of 40 CFR Part 60. However, it was stated that the deficiency regarding submitting alternate test procedures as SIP revisions had not been corrected, and EPA proposed to conditionally approve 4(d) on the condition that the State made a commitment during the comment period to ensure that alternative Board testing procedures were submitted to EPA as SIP revisions.

On September 1, 1982, the Board committed to add language to Section 4(d) which would require that any alternative test method approved by the Board would be submitted to U.S. EPA as a SIP revision. No further comments were received on this provision.

Action: Approval of 4(d), with the understanding that the State must promulgate a revision to Section 4(d) to add language requiring that any alternative test method approved by the Board would be submitted to U.S. EPA as a SIP revision.

(4)(e) *Gas Collector Main Emissions*.—This paragraph provides an inspection procedure for determining compliance at gas collector mains with the visible emissions limitations in Section 2(e).

Discussion: See the discussion under § 2(e).

Action: Approval of 4(e).

Section 5. *Compliance Schedules*.—This section provides that compliance schedules for precarbonization towers, pushing, quenching and underfire stacks are to be determined pursuant to Rule 6-1. Compliance schedules for charging, charge port lids, offtake piping, gas collector mains and oven doors are to be determined by schedules contained in 11-3, with certain enumerated exceptions.

Discussion: See the discussion and action in 2(b) regarding the acceptability of the compliance schedules for sources covered by 2(b)(c), (d), (e) and (f) of 11-3.

In its June 1, 1982 proposed rulemaking, EPA noted that Section 4(a) of Rule 6-1 generally requires the meeting of certain increments and a demonstration of compliance by December 31, 1981. Under Section 4(b) of 6-1, the Board may grant further extensions up to December 31, 1982, only where: (1) The source demonstrates that compliance with the interim or final dates is not possible and (2) the source submits a letter of intent, which includes a schedule of dates culminating in the December 31, 1982 compliance date. Any such alternative plan must be incorporated into the source's permit and submitted to U.S. EPA as a SIP revision.

Under Section 4(d) of Rule 6-1, the Board can establish alternative compliance schedules in certain situations where the State promulgates new or more stringent rules. Such extensions are to be granted in accordance with Section 4(b), which requires the submission of these extensions as SIP revisions. At the time these alternative plans are submitted to U.S. EPA, the Agency will review them

to ensure that they are consistent with the Act.

Also in the June 1, 1982 rulemaking EPA noted that the Clean Air Act requires the achievement of NAAQS as expeditiously as practicable, but in no event later than December 31, 1982. EPA interprets 5(b) to permit the Board to extend certain compliance schedules, but in no event to allow such extensions to contravene the requirements of the Clean Air Act.

Action: Approval of Section 5.

Section 6. *SIP Revision*.—This section provides that any exemption given or revision granted to a source by the Board in accordance with Section 2(h)(1), dealing with the quenching operation, shall be submitted to EPA as a SIP revision.

Discussion: No deficiencies were cited regarding this section in either the July 3, 1980 or June 1, 1982 proposed rulemaking actions on the coke battery regulation. No comments were received on this section.

Action: Approval of Section 6.

Conclusion: EPA's rulemaking action on Rule 325 IAC 11-3 is summarized in Table I of this notice. Because of the deficiency noted in Section 2 (h) of 11-3, growth restrictions in Indiana non-attainment areas (other than Porter County) containing coke battery sources will remain in effect, in accordance with the requirements of § 110 (a)(2)(I) of the Clean Air Act.

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 action does not constitute a Major regulation because it primarily approves provisions which were developed by the State and are currently applicable to sources covered by this action. It also disapproves certain provisions which are currently in force in the State. These disapprovals do not constitute major regulations because the iron and steel sources in the State will, as of the time of this rulemaking, remain subject to pre-existing TSP limitations. Where EPA is deferring action on certain provisions, existing approved regulations will remain in effect. This final 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 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 appropriate circuit within 60 days of the date of this notice. 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.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur Oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

This notice is issued under authority of Sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: November 29, 1983.
William D. Ruckelshaus,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

1. Section 52.770 is amended by adding new paragraph (c)(42) as follows:

§ 52.770 Identification of plan.

• • • • •

(c) • • •

(42) On June 26, 1979, Indiana submitted its coke oven battery regulation, APC 9. On October 6, 1980 Indiana resubmitted this regulation recodified as 325 IAC 11-3. On August 27, 1981, Indiana submitted amendments to 325 IAC 11-3. EPA is taking no action on 325 IAC 11-3-2(a), Pre-Carbonization Emissions. It is taking no action on 325 IAC 11-3-2(i), Underfire Particulate and Sulfur Dioxide Emissions, as it applies to Lake County.

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2. Section 52.776 is amended by adding new paragraphs (f) and (g) as follows:

§ 52.776 Control strategy: particulate matter.

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(f) 325 IAC 11-3-2(f), (as amended on August 27, 1981) is not approved as it applies to Lake and Marion Counties, insofar as it does not meet the requirements of Section 172(b)(3) of the Clean Air Act.

(g) 325 IAC 11-3-2(g) and 11-3-2(h) (as amended on August 27, 1981) are disapproved insofar as they do not meet

the requirements of Section 110(a)(2)(D) of the Clean Air Act.

[FR Doc. 83-32436 Filed 12-2-83; 8:45 am]

BILLING CODE 5560-50-M

40 CFR Part 271

(SW-4-FRL 2483-3)

Hazardous Waste Management Programs; South Carolina; Interim Authorization Phase II, Component C

AGENCY: Environmental Protection Agency.

ACTION: Approval of state hazardous waste management program.

SUMMARY: The State of South Carolina has applied for Interim Authorization Phase II, Component C. EPA has reviewed South Carolina's application for Phase II, Interim Authorization Component C, and has determined that South Carolina's hazardous waste program is substantially equivalent to the Federal program covered by Component C. The State of South Carolina is hereby granted Interim Authorization for Phase II, Component C, to operate the State's hazardous waste program covered by Component C in lieu of the Federal program.

EFFECTIVE DATE: Interim Authorization Phase II, Component C, for South Carolina shall become effective on December 6, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Scarbrough, Chief, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365, Telephone (404) 881-3016.

SUPPLEMENTARY INFORMATION:

Background

In the May 19, 1980, Federal Register (45 FR 33063) The Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), to protect human health and the environment from the improper management of hazardous waste. The Act (RCRA) includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in that State in lieu of a Federally administered program. For a State program to receive final authorization, its hazardous waste program must be fully equivalent to and consistent with the Federal program under RCRA. In order to expedite the authorization of State programs, RCRA allows EPA to grant a State agency

Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the Federal program. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program takes effect.

Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. The Phase I regulations include the identification and listing of hazardous wastes, standards for generators and transporters of hazardous waste, standards for owners and operators of treatment, storage and disposal facilities, and requirements for State Programs. The Phase II regulations cover the procedures for issuing permits under RCRA and the standards that will be applied to treatment, storage, and disposal facilities in preparing permits. In the July 26, 1982, Federal Register (47 FR 32373), the Environmental Protection Agency announced that States could apply for Component C of Phase II of Interim Authorization. Component C published in the Federal Register July 26, 1982 (47 FR 32274), contains standards for permitting facilities that dispose hazardous waste in waste piles, surface impoundments, land treatment, and landfills.

A full description of the requirements and procedures for State Interim Authorization is included in 40 CFR Part 271, Subpart F, (46 FR 8298) January 26, 1982, and (47 FR 32373) July 26, 1982.

The State of South Carolina received Interim Authorization for Phase I on February 25, 1981, and Interim Authorization for Phase II, Components A & B, on November 3, 1982.

Draft Application

The State of South Carolina submitted its draft application for Phase II, Component C, Interim Authorization on November 24, 1982. After detailed review, EPA identified minor concerns and transmitted comments to the State on January 31, 1983, for its consideration. Some of the issues raised by EPA follow.

EPA requested that South Carolina submit a checklist which indicated which standards will be followed for land disposal permitting, that the MOA reference the specific federal requirements to be imposed, and that the Attorney General certify that the State has the authority to issue and enforce land disposal permits. State

officials resolved these issues through submitting a checklist for equivalence delineating those areas where South Carolina would use permit conditions to conform to federal requirements, by referencing in the MOA the specific federal requirements to be imposed, and by certification of the Attorney General that the State has the necessary authority to enforce land disposal permits.

EPA also requested the State to update its permitting procedures by stating in the Attorney General's statement that South Carolina statutes and regulations set procedures for permitting land disposal facilities. Additionally, the Attorney General's statement had to include a paragraph stating that applications for land disposal permits contain information substantially equivalent to pertinent parts required at 40 CFR 270.10, 270.13, 270.14, 270.29 and 270.61-270.63. State officials revised the Attorney General's statement to include these revisions concerning permitting procedures and land disposal permit applications.

Finally, since South Carolina has no non-sudden liability insurance coverage requirements, the State had to commit in the MOA to place owners and operators of land disposal facilities on a phased-in compliance schedule for meeting this requirement. The State would notify facilities of the compliance date for providing this coverage as a permit condition. State officials incorporated into the MOA new language on the phased-in compliance schedule for facilities to provide non-sudden liability insurance coverage.

Final Application

On May 18, 1983, South Carolina submitted to EPA a Final Application for Interim Authorization, Phase II, Component C, under RCRA. An EPA review team consisting of both Headquarters and Regional personnel made a detailed analysis of South Carolina's Hazardous Waste Management Program.

EPA comments were forwarded to the State on July 7, 1983. No major questions were raised in the comments. The comments requested minor clarification and correction to the application.

By letter dated March 16, 1983, the State responded satisfactorily to the issues raised by EPA.

Public Hearing and Comment Period

As noticed in the Federal Register on July 6, 1983 (48 FR 31056), EPA gave the public until August 8, 1983, to comment on the State's application. EPA issued a public notice for a hearing in Columbia,