TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
*	*	*	*
Nov. 8, 1986	Land disposal prohibitions on dioxins and F001–F005 solvents.	3004(e)	[*Insert date of publication*], 51 FR [*insert Federal Register page numbers*].
*	*	*	*

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November 7, 1986

Part III

Environmental Protection Agency

40 CFR Parts 51 and 52

Air Quality Implementation Plans; Restructuring SIP Preparation Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL-3044-2]

Air Quality Implementation Plans; Restructuring SIP Preparation Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking restructures and consolidates the existing regulations for the development of State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS). At present, these regulations are complex, not well organized, and contain many obsolete provisions. The EPA deletes obsolete provisions and rewrites the regulations in a new, shorter, and better organized format. States using the new regulations to prepare SIP's will find them current and easier to follow. The regulations also have a flexible structure into which future requirements can be more easily included.

EFFECTIVE DATE: December 8, 1986.

FOR FURTHER INFORMATION CONTACT: Ted Creekmore or Joseph Sableski, Plans Guidelines Section, MD-15, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5697 commercial or 629-5697 FTS.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1983 (48 FR 46152), EPA proposed to restructure and consolidate regulations for the development of SIP's. These regulations are found in 40 CFR Part 51, "Requirements for Preparation, Adoption, and Submittal of Implementation Plans;" and 40 CFR Part 52, "Approval and Promulgation of Implementation Plans."

Since Part 51 was promulgated in 1971, many substantive revisions have been made. Almost every portion has been revised or added to. Revisions have been forced into the existing format, often making the whole regulation more confusing. As a result, users—mainly the State and local air pollution control agencies—have difficulty finding and understanding applicable requirements in the regulations.

Thus, today's action revises the regulations to:

1. Remove obsolete materials and reporting requirements.
2. Condense and clarify complicated and detailed requirements.
3. Develop a structure that would allow users to find easily applicable requirements, and
4. Provide for future requirements and changes.

To accomplish these goals, EPA deletes obsolete materials and restructures the remaining regulations in a new format (shown in Table 1 of this action). The new format provides for better organization and flexibility for adding or changing future SIP requirements. To implement the new format, EPA developed a master plan to restructure 40 CFR Part 51. As shown in Table 1, the new format expands the Part 51 structure to include more topical headings; these will act as guideposts in locating applicable requirements. This is accomplished by having more subparts than currently appear in Part 51. For instance, where now there is only one section for prevention of air pollution episodes (§ 51.16), there will be a whole subpart that contains several sections—one for classification of regions for episode plans, one for levels of significant harm, one for contingency plans, and one for reevaluation of episode plans. Furthermore, the use of section subdivisions below the third order is significantly reduced.

A more extensive discussion of the rulemaking may be found in the October 11, 1983, proposal which may be used as a reference in studying today's rulemaking.

Restructuring Form

This action includes two tables to help identify and explain the restructured sections as follows:

(1) Derivation Table and Master Plan (Table 1). This table shows the origin of each new section and gives the master restructuring plan.

(2) Distribution Table (Table 2). This table indicates where each original section fits into the new restructured format.

Revisions to 40 CFR Part 52 and Other Revisions

This action includes changes in the cross-references to separate provisions of the existing regulations in Part 52 and unrestructured portions of Part 51. The cross-references are made to the same or equivalent provisions in the restructured regulations.

Relationship of Action to Existing SIP's and Nonattainment Requirements

The EPA does not anticipate that this action will have any significant impact on existing SIP's. The EPA is promulgating very few substantive changes to Part 51. The majority of these changes remove material that was intended to serve as guidance to the States in preparing their plans. The EPA does not intend to require States to "clean up" their SIP's by removing or revising outdated material such as original emission inventories. States may make such revisions as their resources permit. Where SIP's refer to the former Part 51 citations, EPA will interpret those citations as referring to the new citations in Part 51 as codified pursuant to this action and as cross-referenced in Table 2. EPA also reminds States of the generally accepted interpretation that a State regulation that references a Federal regulation remains unchanged if the Federal regulation is revised subsequent to adoption of the State regulation.

The EPA also does not anticipate that this action will have any appreciable impact on SIP revisions submitted to meet the requirements of Part D, Title I of the Clean Air Act (Act). Part D contains new requirements for areas which did not attain the standards within the deadlines established by the 1970 amendments. The only regulations EPA has promulgated that incorporate Part D requirements concern new source review. The EPA is not promulgating changes to the new source review rules. For the remaining Part D requirements, EPA issued nonregulatory guidance. It is beyond the scope of the rulemaking to address the provisions of Part D of the Act, and EPA is not incorporating any of this guidance into Part 51 at this time.

Public Comments

Comments were received from 16 sources including individuals, businesses, local governments, and environmental groups. This document provides a summary of responses to major comments. Responses to these as well as other comments may be found in Docket Number A-81-25 listed under IV-F-1.

Definition of Reasonably Available Control Technology (RACT) [§ 51.100(o)]

The existing Part 51 regulations contain only two provisions that use the term "RACT"—namely, §§ 51.13(b) and 51.31(c) [§§ 51.110(c) and 51.341 in the restructured proposal]. Section 51.13(b) establishes a presumption that 3 years is a reasonable time for attainment of a secondary NAAQS if RACT would bring about attainment. Section 51.31(c) allows an extension of the deadline for submission of a SIP for a secondary NAAQS but only upon a showing that more than RACT is necessary for attainment. The Part 51 regulations separately define RACT in § 51.1(o) largely by reference to Appendix B that gives examples of RACT technology. The EPA promulgated both of these provisions and the definition of RACT simultaneously in the early 1970's.

Several years later, EPA used the term RACT in a different context as part of its effort to remedy the widespread persistence of NAAQS violations. In 1976 and then in the months following the enactment of Part D in 1977, EPA stated more elaborate and specific provisions of RACT. The EPA, however, never attempted to incorporate those provisions, nor any of the requirements of Part D relating to existing sources, into the Part 51 regulations.

The proposed definition of RACT was intended only to codify existing policy. It included provisions of RACT from guidance for nonattainment plans (Part D of the Act) because EPA believed this guidance was established and accepted. However, upon reexamination of the proposed definition, EPA has concluded it went too far by attempting to include Part D provisions. The purpose of this rulemaking is merely to streamline and recodify the existing requirements of the Part 51 regulations, not to incorporate parameters of Part D into those regulations. The definition of RACT, therefore, should reflect, as near as possible, only what EPA intended the term to mean originally for the purposes of §§ 51.13(b) and 51.31(c). Thus the definition is changed to read as follows:

"Reasonably available control technology" means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account (1) the necessity of imposing such controls in order to attain and maintain a national ambient air quality standard, (2) the social environmental and economic impact of such controls, and (3) alternative means of providing for attainment and maintenance of such standard. (This provision defines RACT for the purposes of §§ 51.110(c)(2) and 51.341(b) only.)

There was some concern by commenters that the proposed deletion of Appendix B, "Example of Emission Limitation Attainable With Reasonably Available Technology" would affect the application of RACT to various regulatory castegories such as visible emissions. This action in no way affects the application of RACT to any regulatory, industry, or source category. As discussed in the proposed rulemaking, deleting guidance appendices which are frequently changing eliminates the need to constantly update Part 51. The EPA proposed deleting Appendix B because many of the limitations for source categories have changed, and up-to-date RACT guidance on emission limitations for specific sources is available through various guidance documents.

Air Quality Maintenance Provisions

The comments on our suggestions of possible revisions to the air quality maintenance provision indicated that any revisions would be the subject of much controversy. Thus, EPA intends to make no revision to the maintenance regulations of Subpart D in this action except to renumber section references therein, but will consider options for future revisions. The EPA may eventually incorporate Subpart D into Subpart G, "Control strategy." This may involve rewriting Subpart D as part of Subpart G or redesignating Subpart D as a new Subpart Ga.

Section 51.100, Definitions

Commenters suggested revising § 51.100(n)(7) through (9) to better reflect today's transportation plans requirements. They wanted to delete example measures such as "commuter taxes" and "gasoline rationing" since they are unlikely to be implemented. They wanted to revise the term "parking restrictions" and read "preferential parking requirements" in order to shift emphasis from restriction to incentive methods. They suggested other changes such as adding the phrase "and motor vehicle trips" to recognize the need for measures that reduce trips and the related emissions associated with the cold-start and hot-soak modes. Some of the examples of transportation control measures in paragraphs (n)(7) through (9) have largely been superseded by other measures to control emissions from transportation sources. The EPA believes it would be appropriate to replace paragraphs (n)(7) through (9) with a general reference to other transportation control measures. The reference would include those measures listed in section 108(f) of the Act as examples of transportation measures that a State may adopt. The regulations have been modified accordingly.

One commenter recommended changing the definition of transportation control measures at § 51.100(r) to include only highway or transit-related measures on the grounds that measures decreasing emissions from individual motor vehicles, referenced in the existing definition, are actions not under the jurisdiction of Federal or State transportation agencies. The commenter also recommended that the proposed definition be expressed in more general terms. Whether or not measures are under the jurisdiction of a transportation control agency is not a relevant consideration so long as the measure is enforceable by the State. Moreover, EPA believes that the existing definition, which includes "any measure. . ." that is directed toward reducing emissions of air pollutants from transportation sources,. . . ." is sufficiently general. Thus, EPA is retaining the existing definition of "transportation control measure," except that the measures listed in section 108(f) are being referenced as examples rather than including the example measures in the existing regulation.

It was suggested that § 51.100 (s) through (w) should be deleted because the transportation-related terms defined in these sections are no longer used in Appendix M, "Transportation Control Supporting Data Summary," which EPA proposed to delete. The EPA agrees with the commenter and has deleted these paragraphs.

Section 51.104, Revisions

Another commenter suggested EPA amend § 51.104(a) to add a requirement that plans shall be revised when necessary to "otherwise comply with any additional requirements established under the Act as amended in 1977." This language is a quote from section 110(a)(2) H of the Act. The EPA agrees with this comment and has amended section 51.104(a) to track the language of section 110(a)(2)(H). Section 51.104(a) now requires that a plan be revised to take into account a finding by the Administrator that the plan is substantially inadequate to comply with any applicable additional requirements established under the Clean Air Act Amendments of 1977.

A commenter noted that we had proposed to delete § 51.4(b)(6) and stated that this would result in dropping requirements for local planning, transportation, and economic development agencies to be informed of air quality maintenance plan proposals. This section was inadvertently dropped in the proposal and is restored in this rulemaking.

Section 51.110, Attainment and Maintenance of National Standards

One commenter felt that the language in the proposed § 51.110(a) inappropriately presupposes that further emission reductions will be necessary in every case in order to achieve or maintain the national standards, contrary to the existing § 51.12(a), (b). It was EPA's intention to use language similar to § 51.12(a) and to require emissions reductions only to the degree necessary for attainment and maintenance of the NAAQS. Section 51.110(a) states, "Each plan must set forth a control strategy that provides emission reduction necessary for attainment and maintenance of national air quality standards." The section further states that emission reductions must be sufficient to offset future increases in emissions. The EPA believes that these statements do not presuppose that further reductions will be necessary in every case. However, as a clarification, we have revised section 110(a) to explain that the control strategy must provide the degree of emission reduction necessary to attain and maintain the standards, and that the reductions must offset "any" increases that "are expected to" result from growth.

Section 51.118, Additional Provisions for Lead

One commenter stated that their agency has not been reporting data to EPA in hazardous and trace emissions systems (HATREMS) coding forms. The commenter felt that the requirement that lead emissions be submitted on HATREMS coding forms was contrary to our remarks in the proposal when we indicated that we do not need to specify the content or format of point and area source data. The EPA agrees that the regulation need not specify the format for submission of point and area data. The commenter recommended that EPA modify the requirement to at least allow States greater flexibility as to the format for submitting data. Accordingly, we have modified § 51.118(e) to specify that the data should include the information identified in the HATREMS forms, but need not be in the format of those forms.

Subpart H, Prevention of Air Pollution Emergency Episodes

A commenter suggested that EPA revise the propsed § 51.153, "Reevaluation of episode plans," to provide an alternate minimum schedule on which episode plans would be reevaluated. The proposal requires States to reevaluate their priority classification every 5 years to determine if changes are needed. The 5 year review would coincide with EPA's review of an ambient air quality standard or promulgation of a revised standard. If the evaluation indicates in priority classification, the proposal calls for appropriate changes in the emergency episode plan(s) within 1 year after EPA publishes its determination with regard to pollutant reassessment in the **Federal Register**. The commenter felt the regulation should require reassessment of the priority classification whenever a standard was tightened.

If there is no change tightening the standard after EPA review, the reevaluation should be required every 5 years or after EPA review, whichever is later. After studying this issue further, EPA believes that it is not necessary to specify minimum requirements for States to reevaluate their priority classification and episode plans. Under current legal authority, EPA may require States to revise their episode plans when necessary. Indeed, States should already be periodically reevaluating the adequacy of their episode plans. When an EPA revision to an air quality standard impacts episode planning, EPA will set forth minimal criteria for reevaluations of episode plans at that time. Such changes might include a revision to the significant harm levels or priority classification criteria. Thus, § 51.153(b) is deleted and not included in the promulgation. However, EPA is retaining § 51.153(a) which has a general requirement for periodic reevaluation of priority classification for episode plans and retaining the requirement that the episode plans be revised if the priority classification changes.

One commenter noted that in rewriting the old § 51.3 into Subpart H, the provision that "each region will be classified separately with respect to each of the pollutants considered (Sulfur dioxide . . . ozone)" was deleted. The EPA has added an introduction to clarify the intent of the regulation and has included this phrase.

Subpart I, Review of New Sources and Modifications

A commenter opposed the proposal to drop requirements for States to notify EPA of permitting actions for all minor sources and for all sources outside nonattainment areas [§ 51.161(d)] on the grounds that new source review is a central part of the prevention of significant deterioration (PSD) and the air quality maintenance plan process and that notification is needed for EPA oversight. The provisions governing PSD procedures, § 51.24, require States to notify EPA of permitting actions for major sources outside nonattainment areas. The deletion from § 51.161(d) did not affect those requirements, only the notification requirements for minor sources. However, EPA agrees that where State or local agency review of new or modified minor sources is required, it should be notified of permitting action for such sources. The very fact that such sources are subject to review indicates that it would be appropriate to require that EPA be notified of permitting actions on such sources for oversight purposes. Moreover, a large number of minor sources could have a significant cumulative effect on air quality. Thus, under the authority of sections 110 and 301 of the Act, the proposed § 51.161(d) has been modified so that it now is essentially identical to existing § 51.18(h)(4). Hence, EPA will require reporting of all State permitting actions, as required in the existing SIP regulations.

Appendices

In the October 11, 1983, proposed regulations, EPA proposed deleting several appendices from Part 51 (A through K, M through O, and R) for two reasons. First, EPA stated that the necessary guidance in Part 51 is available from other EPA publications. For example, guidance on emission inventories, monitoring, and diffusion modeling is routinely updated by EPA through guidelines readily available to the public. Guidance issued by EPA is listed in the "Air Programs Reports and Guidelines Index" which includes an index of current technical and guideline documents prepared by EPA over the past several years. The "Air Programs Policy and Guidance Notebook" provides additional guidance materials. Both of these guidelines are distributed to State and local agencies. Copies are available for public inspection and copying at the Public Information Reference Unit at EPA's office in Washington, DC, and at EPA Regional Offices. Secondly, many of the existing appendices are obsolete because EPA policy has changed since their original proposal. Rapid changes in SIP policy and the difficulty in promulgating timely revisions to Part 51 have led EPA to develop guidelines rather than revise the Part 51 appendices. One commenter felt that deleting these appendices will create significant uncertainties about the legally binding effects of EPA guidance. They suggested we update them and remove obsolete material, not delete them.

The EPA believes it would be unduly burdensome to update the appendices. The guidelines are constantly being updated, and some of the appendices would become obsolete in a short period of time. In addition, most of the appendices have performed their function by assisting the States when the initial SIP's were developed. The only major reason for leaving them in Part 51 would be for historical purposes. Finally, publishing guidance in appendices to the regulations would not necessarily make the guidance more legally binding. For these reasons, today's action deletes the appendices as proposed.

Appendix L

A commenter pointed out that the location of a phrase in §§ 1.1(b), 1.1(c), and 1.1(d) of Appendix L is misleading. The phrase appears after "NO_2-," and reads as follows: "NO_2-24-hour average and meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours, or in the case of ozone, the situation is likely to recur within the next 24 hours unless control actions are taken." The commenter pointed out that this phrase applies to all five pollutants, not just to NO_2 as its location would imply. Thus, the phrase should be separated from its inclusion under the NO_2 subtitle. The EPA believes the commenter is correct and has made the appropriate clarification in today's action.

Deletion of Reporting Requirements

One commenter opposed deleting the reporting requirements of § 51.326, "Reportable revisions," and § 51.328, "Plan prescribed actions," because they felt each section required a formal report that each citizen could easily read and also provided greater assurance that the information covered by the sections would be made available. The EPA believes that the burden on the States of including in the annual report all substantive plan revisions that otherwise need not be submitted for approval is small and that such information may be useful to EPA and the public. Accordingly, § 51.326 is being retained to ensure that EPA is apprised of all substantive plan revisions as a matter of course. The EPA believes that it would be more appropriate to acquire the information covered by § 51.328 only on an as needed basis through program and grant mechanisms. The commenter has offered no reason as to why a citizen would need the information covered by § 51.328. In any event, a citizen presumably would be able to obtain such information directly from the States. Thus, this action retains § 51.326 and deletes § 51.328.

Other Revisions to the Rulemaking

In our review of the proposal, we determined that several minor changes were necessary to make the regulation read better and to correct inadvertent errors. These changes are listed as follows:

1. The proposal did not redesignate or restructure § 51.12(e) through (i) which refer to maintenance plans because no change in maintenance provisions was proposed. The final action redesignates § 51.12(e) through (i) as § 51.110(h) through (l). No revisions are made in these sections. This redesignation improves the organization of the regulation by including these sections in the new format.

2. The proposal did not redesignate or restructure § 51.24, Prevention of significant deterioration, because EPA intended to do this in a separate rulemaking. The final action redesignates § 51.24 as § 51.166 under the new format in the new source review subpart. No revisions are made to this section. This redesignation improves the organization of the regulation by including § 51.124 in the new format.

3. The EPA noticed a typographical error in § 51.104(b). The first sentence should read, "The State must *revise* the plan within 60 days . . . ." not "The State must *review* the plan, etc." The promulgation corrects this error.

4. The EPA decided that § 51.113(a) is a duplication of § 51.112(b)(1). There is no need for a "procedures" subdivision. Thus, EPA incorporated § 51.113(b) as § 51.112(b)(4) and deleted the proposed § 51.113.

5. The EPA noted that the last two sentences of the proposed § 51.161(d) stated "For pollutants where no designations are established, such as for lead, a copy of the notice is required for all major sources. The definition of a major source for lead is given in § 51.100(k)(2)." In these two sentences, the term "major" was incorrectly proposed and is replaced with the term "point" in this action.

6. The EPA has restructed § 51.260(a)(2) to more closely convey the meaning of existing § 51.15(a). Also, in reviewing § 51.260(a)(3), EPA noted it reads "Categories of other sources" which was inadvertently changed from the original version. Section 51.260(a)(3) should read "Categories of such sources." This revision is made in the final action.

Ongoing Revisions

Several commenters were concerned that we are not restructuring various portions of Part 51 because they are currently undergoing revision. They referred to amendments in § 51.18, "Review of new sources and modifications," proposed on August 25, 1983 (48 FR 38742), and revisions in the stack height provisions (§ 51.164) mandated by the court. Since this restructuring package was proposed, the following Part 51 regulations have been promulgated:

1. 49 FR 43202, October 26, 1984. Regulations adding a new paragraph in § 51.18 involving fugitive emissions of stationary sources.

2. 50 FR 27892, July 8, 1985. Regulations revising §§ 51.1, 51.12, and 51.18 involving stack height provisions.

3. 51 FR 11414, April 2, 1986. Regulations adding new sections in §§ 51.1 and 51.12 involving intermittent control systems.

These provisions have been incorporated into the restructured subparts unchanged as promulgated, except that headings, titles, and numbering have been changed to fit into the new format.

Revisions to Part 52

As mentioned earlier, this action includes nomenclature changes in Part 52 where cross-references to Part 51 are made. In addition, some of the Part 52 provisions are obsolete and are deleted in this action.

Sections 52.828(b) and 52.2078(b) have been rescinded since they concern primarily 1-year extensions for compliance that were allowed under section 110(f) of the Act prior to 1977 Amendments. Section 110(f) affect any authority the States of Iowa and Rhode Island may have to issue any abatement orders that are permitted under the Act as amended in 1977.

Environmental, Economic, and Energy Impact Assessments

Under Executive Order (E.O.) 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on the environment, energy, competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation was submitted to the Office of Management and Budget (OMB) for review under E.O. 12291. Any comments from OMB and any EPA responses to the comments are available in Docket A-81-25.

Pursuant to the provisions of U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on small entities because no additional costs will be incurred. This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501 et seq.

Judicial Review

The following regulatory amendments are nationally applicable, and this action is based on determination of nationwide scope and effect. Therefore, under section 367(b)(1) of the Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petition for review must be filed on or before January 6, 1987.

TABLE 1.—DERIVATION TABLE AND MASTER PLAN TO RESTRUCTURE 40 CFR PART 51

New designation section No. and title	Old designation section No. and title
Subpart F Procedural Requirements	
51.100 Definitions	51.1 Definitions.
51.101 Stipulations	51.2 Stipulations.
51.102 Public hearings	51.4 Public hearings.
51.103 Submission of plans	51.5 Submission of plans.
51.104 Revisions	51.6 Revisions. 51.34 Variances.
51.105 Approval of plans	51.8 Approval of plans.
Subpart G Control Strategy	
51.110 Attainment and Maintenance of National Standards	51.10 General requirements (portion). 51.12 Control strategy: General (portion). 51.13 Control strategy: SO_x & PM (portion). 51.14 Control strategy: CO, HC, Ox & NO_2 (portion). 51.80 Demonstration of attainment: Pb (portion).
51.111 Description of control measures	51.14 Control strategy: CO, HC, Ox, & NO_2 (portion). 51.87 Measures: Pb.
51.112 Demonstration of adequacy	51.13 Control strategy: SO_x & PM (portion). 51.14 Control strategy: CO, HC, Ox, & NO_2 (portion). 51.80 Demonstration of attainment: Pb (portion). 51.82 Air quality data (portion).
51.113 Time period for demonstration of adequacy	51.10 General requirements (portion). 51.81 Emissions data: Pb (portion).
51.114 Emissions data and projections	51.13 Control strategy: SO_x & PM (portion). 51.14 Control strategy: CO, HC, Ox, & NO_2 (portion). 51.81 Emissions data: Pb (portion).
51.115 Air quality data and projections	51.13 Control strategy : SO_x & PM (portion). 51.14 Control strategy: CO, HC, Ox, & NO_2 (portion). 51.82 Air quality data: Pb (portion).
51.116 Data availability	51.10 General requirements (portion). 51.88 Data availability: Pb.
51.117 Additional provisions for lead	51.80 Demonstration of attainment: Pb (portion). 51.81 Emissions data: Pb (portion). 51.82 Air quality data: Pb (portion). 51.83 Certain urbanized areas: Pb. 51.84 Areas around significant point source: Pb. 51.85 Other areas: Pb. 51.86 Data bases: Pb (portion).
51.118 Stack height provisions	51.12 Control strategy: General (portion).
51.119 Intermittent control systems	51.12 Control strategy: General (portion).
51.120-51.135 Reserved for new requirements as set forth in the Act	
51.136-51.140 Reserved for maintenance of PSD increment provisions	
Subpart H Prevention of Air Pollution Emergency Episodes (§§ 51.150 to 51.159)	51.3 51.16 Classification of regions. Prevention of air pollution emergency episodes.
Subpart I Review of New Sources and Modifications (§§ 51.160 to 51.189)	51.18 51.24 Review of new sources and modifications. Prevention of significant deterioration.
Subpart J Air Quality Surveillance (§§ 51.190 to 51.209) (Promulgated 5/10/79)	51.17 Air quality surveillance.
Subpart K Source surveillance (§§ 51.210 to 51.229)	51.19 Source surveillance.
Subpart L Legal Authority (§§ 51.230 to 51.239)	51.11 Legal authority.
Subpart M Intergovernmental consultation (§§ 51.240 to 51.259) (Promulgated 6/18/79)	51.21 Intergovernmental cooperation.
Subpart N Compliance Schedules (§§ 51.260 to 51.279)	51.15 Compliance schedules.
Subpart O Miscellaneous Plan Content Requirements	
51.280 Resources	51.20 Resources.
51.281 Copies of rules and regulations	51.22 Rules and regulations.
51.282 Reserved	
51.283 Reserved	
51.284 Public notification (Promulgated 5/10/79)	
Subpart P Visibility protection (§§ 51.300 through 51.319) (Promulgated 12/2/80)	
Subpart Q Reports (§§ 51.320 through 51.339)	51.7 Reports.
Subpart R Extensions (§§ 51.340 through 51.369)	51.30 Request for 2-year extension. 51.31 Request for 18-month extension.
Revoked	51.1 Definitions (obsolete portions). 51.3 Classification of regions (as applicable to control strategies). 51.4 Public hearings (obsolete portions). 51.5 Submission of plans; preliminary review of plans (obsolete portions). 51.23 Exceptions. 51.32 Request for 1-year postponement. 51.33 Headings and appeals relating to request for one year postponement. 51.326 Reportable revisions. 51.328 Plan prescribed actions. Appendix A Air quality estimation. Appendix B Examples of emission limitations attainable with reasonably available control technology. Appendix C Major pollutant source. Appendix D Pollutant emissions inventory summary. Appendix E Point source data. Appendix F Area source data. Appendix G Emission inventory summary. Appendix H Air quality data summary. Appendix K Control agency functions. Appendix M Transportation Control Supporting Data Summary. Appendix N Emissions Reductions Achievable Through Inspection, Maintenance and Retrofit of Light Duty Vehicles. Appendix O [Untitled]. Appendix R Agency functions for air quality maintenance area plans.

NA—Not applicable.

TABLE 2.—DISTRIBUTION TABLE

Old section	New section
51.1(a) through (nn) All paragraph designations are the same and have the same paragraph designation *except* those which are listed below.	51.100(a-nn).
51.1(a)	51.100(a) New citations added.
51.1(j)	51.100(j). Definition of local agency deleted. 51.1 includes two definitions of "local agencies." EPA considers 51.100(g) a better definition. A new 51.100(j) is added which defines the term "plan."
51.1(k)(1)	51.100(k)(1) The term "Volatile Organic Compound" (VOC) replaces the term "Hydrocarbons."
51.1(k)(1)(i,ii)	51.1 Point source definition updated.
51.1(k)(1)(iii)	Unnecessary, Appendix C is deleted in this action.
51.1(1)	51.1Reference to Appendix D removed; reference to inventory techniques updated.
51.1(m)	51.100(m) revised.
51.1(o)	51.100(o) revised.
51.2	51.101.
51.3	51.50, streamlined.
51.4 All paragraphs are the same and are restructured with the same paragraph numbers except as noted below.	51.102.
51.4(a), (e)	51.102(a), (e) rewritten.
51.4(b)(4)	51.102(b)(4) rewritten.
51.4(b)(6)	Unnecessary, redundant.
51.4(f)	Deleted, obsolete.
51.5 All paragraphs are the same and restructured with the same paragraph numbers except as noted below	51.103.
51.5(a)	Rewritten; "Note" deleted.
51.5(d), (e)	Deleted, redundant.
51.6	51.104.
51.6(b) through (f)	51.104 (b) through (f) rewritten.
51.8	51.105.
51.10(a)	51.110(g) rewritten.
51.10(b)	51.110(b), (d).

TABLE 2.—DISTRIBUTION TABLE—Continued

Old section	New section
51.10(c)	51.110(c)(1), (d).
51.10(d)	51.110(e), revised.
51.10(e)	51.116(c).
51.11(a)	51.230.
51.11a(1-6)	51.230(a) through (f).
51.11(b)	Unnecessary provisions for transportation plans, obsolete.
51.11(c)	51.231(a).
51.11(d)(1)	51.231(b).
51.11(d)(2)	51.231(c).
51.11(e)	51.232(a).
51.11(f)	51.232(b).
51.12(a)	51.110(a).
51.12(b)	51.110(a), (c).
51.12(c)	Deleted, redundant.
51.12(d)	51.110(f).
51.12(e)	51.110(h).
51.12(f)	51.110(i).
51.12(g)	51.110(j).
51.12(h)	51.110(k).
51.12(i)	51.110(l)..
51.12(j)	51.118(a).
51.12(k)	51.118(b).
51.12(l)	51.118(c).
51.12(m)	51.119(a).
51.12(n)	51.119(b).
51.13(a)	51.110(b).
51.13(b)	51.110(c).
51.13(c)	51.115(c).
51.13(d)	Deleted, example region approach.
51.13(e)(1) phrase "in the example regions to which it applies."	Deleted, example region approach.
Rest of 51.13(e)(1)	51.112(a).
51.13(e)(2)(i,ii)	Air Programs Reports and Guidelines Index.
51.13(e)(2)(iii)	51.112(a) and (b).
51.13(e)(3)(i)	51.112(b)(4), Air Programs Reports and Guidelines Index.
51.13(e)(3)(ii)	51.114(a).
51.13(e)(3)(iii)	51.112(b)(3), rewritten.
51.13(f,g)	51.114(a), 51.115(a) Portions related to example region approach deleted.
51.14(a)(1)	51.110(a), Rewritten, reference to priority of regions deleted.
51.14(a)(2)	51.111.
51.14(b)	Unnecessary.
51.14(c)(1)	51.112(a).
51.14(c)(2) and (5) through (7)	Air Programs Reports and Guidelines Index.
51.14(c)(5)	51.112(a).
51.14(c)(6)	51.112(b)(4).
51.14(c)(8)	51.115(d).
51.14(c)(9)	Reference to hydrocarbon standard which has been revoked, deleted.
51.14(d)	51.114(a).
51.14(e)	51.115.
51.14(f)	Air Programs Reports and Guidelines Index.
51.14(g)	Obsolete.
51.14(h)	Air Programs Reports and Guidelines Index.
51.15(a)(1)	51.260(a), (b).
51.15(b)(1)	51.261(a).
51.15(b)(2)	51.261(b).
51.15(c)	51.262(a).
51.16(a)	51.151.
51.16(b)	51.152(a).
51.16(d)	Deleted, obvious.
51.16(e)	51.152(b).
51.16(f)	Obsolete.
51.16(g)	51.152(c).
51.16(h)	51.152(d).
51.18(a)	51.160(a).
51.18(b)	51.160(b).
51.18(c)	51.160(c).
51.18(d)	51.160(d).
51.18(e)	51.162.
51.18(f)	51.160(e).
51.18(g)	51.163.
51.18(h)	51.161.
51.18(i)	Obsolete, referes to Appendix O, guidance on indirect source review.
51.18(j)	51.165(a).
51.18(k)	51.165(b).
51.18(l)	51.164.
51.19 (Introduction)	51.210.
51.19(a)	51.211.
51.19(b), (c)	51.212.
51.19(d)	51.213.
51.19(e)	51.214(a).
51.19(e)(1)	51.214(b).
51.19(e)(2)	51.214(c).
51.19(e)(3)	51.214(d).
51.19(e)(4)	51.214(e).
51.19(e)(5)	51.214(f).
51.19e(6)	Obsolete, deleted.
51.20	51.280.
51.22	51.281.
51.23	Unnecessary.
51.24	51.166.
51.30	51.340.
51.31	51.341.
51.32	Deleted, no longer in Clean Air Act (CAA).
51.33	Deleted, no longer in CAA.
51.34	51.104(g).
51.80(a)	51.110(b), 51.118(a).
51.80(b)	51.112(a).
51.80(c)	51.112(b).
51.81(a)	51.117(e).
51.81(b)	51.113(a).
51.81(c)	51.112(b)(1).
51.81(d)	51.114(c).
51.82(a)	51.115(b), 51.117(d)(1).
51.82(b)	51.117(b)(3).
51.82(c)	51.112(b)(3).
51.83	51.117(c)(1).
51.84	51.117(a), (c)(2).
51.85	51.117(c)(3).
51.86(a)	51.112(b)(5).
51.86(b)	51.117(e)(2).
51.86(c)	51.117(d)(1,2).
51.87	51.111.
51.88	51.116(a), (b).
51.326, 51.328	Deleted, report requirement no longer needed.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbon, Carbon monoxide.

40 CFR Part 52

Air pollution control, Ozone, Sulfur Oxides, Nitrogen dioxide, lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: October 6, 1986.

Lee M. Thomas,

Administrator.

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

EPA amends Title 40, Chapter I, Part 51, of the Code of Federal Regulations as follows:

1. The authority citation for Part 51 continues to read as follows:

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

2. Whenever the term "hydrocarbon(s)" appears in Part 51 it is changed to read "VOC(s)".

Subpart A (§§ 51.1–51.8)—[Removed and Reserved]

3. Subpart A (consisting of §§ 51.1 through 51.8) is removed and reserved.

Subpart B—[Reserved]

4. In Subpart B, § 51.12 (e) through (i) are redesignated as § 51.110 (h) through (l), § 51.24 is redesignated as § 51.166 (under Subpart I), and §§ 51.10 through 51.23 are removed and reserved.

Subpart C (§§ 51.30–51.34)—[Removed and Reserved]

5. Subpart C (consisting of §§ 51.30 through 51.34) is removed and reserved.

Subpart E (§§ 51.80–51.88)—[Removed and Reserved]

6. Subpart E (consisting of §§ 51.80 through 51.88) is removed and reserved.

7. Subpart F (consisting of §§ 51.100 through 51.105) is added to read as follows:

Subpart F—Procedural Requirements

Sec.

Subpart F—Procedural Requirements

§ 51.100 Definitions.

As used in this part, all terms not defined herein will have the meaning given them in the Act:

(a) "Act" means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub. L. 91–604, 84 Stat. 1676 Pub. L. 95–95, 91 Stat., 685 and Pub. L. 95–190, 91 Stat., 1399.)

(b) "Administrator" means the Administrator of the Environmental Protection Agency (EPA) or an authorized representative.

(c) "Primary standard" means a national primary ambient air quality standard promulgated pursuant to section 109 of the Act.

(d) "Secondary standard" means a national secondary ambient air quality standard promulgated pursuant to section 109 of the Act.

(e) "National standard" means either a primary or secondary standard.

(f) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, building, structure, or installation which directly or indirectly result or may result in emissions of any air pollutant for which a national standard is in effect.

(g) "Local agency" means any local government agency other than the State agency, which is charged with responsibility for carrying out a portion of the plan.

(h) "Regional Office" means one of the ten (10) EPA Regional Offices.

(i) "State agency" means the air pollution control agency primarily responsible for development and implementation of a plan under the Act.

(j) "Plan" means an implementation plan approved or promulgated under section 110 of 172 of the Act.

(k) "Point source" means the following:

(1) For particulate matter, sulfur oxides, carbon monoxide, volatile organic compounds (VOC) and nitrogen dioxide—

(i) Any stationary source the actual emissions of which are in excess of 90.7 metric tons (100 tons) per year of the pollutant in a region containing an area whose 1980 "urban place" population, as defined by the U.S. Bureau of the Census, was equal to or greater than 1 million.

(ii) Any stationary source the actual emissions of which are in excess of 22.7 metric tons (25 tons) per year of the pollutant in a region containing an area whose 1980 "urban place" population, as defined by the U.S. Bureau of the Census, was less than 1 million; or

(2) For lead or lead compounds measured as elemental lead, any stationary source that actually emits a total of 4.5 metric tons (5 tons) per year or more.

(l) "Area source" means any small residential, governmental, institutional, commercial, or industrial fuel combustion operations; onsite solid waste disposal facility; motor vehicles, aircraft vessels, or other transportation facilities or other miscellaneous sources identified through inventory techniques similar to those described in the "AEROS Manual series, Vol. II AEROS User's Manual," EPA-450/2-76-029 December 1976.

(m) "Region" means an area designated as an air quality control region (AQCR) under section 107(c) of the Act.

(n) "Control strategy" means a combination of measures designated to achieve the aggregate reduction of emissions necessary for attainment and maintenance of national standards including, but not limited to, measures such as:

(1) Emission limitations.

(2) Federal or State emission charges or taxes or other economic incentives or disincentives.

(3) Closing or relocation of residential, commercial, or industrial facilities.

(4) Changes in schedules or methods of operation of commercial or industrial facilities or transportation systems, including, but not limited to, short-term changes made in accordance with standby plans.

(5) Periodic inspection and testing of motor vehicle emission control systems, at such time as the Administrator determines that such programs are feasible and practicable.

(6) Emission control measures applicable to in-use motor vehicles, including, but not limited to, measures such as mandatory maintenance, installation of emission control devices, and conversion to gaseous fuels.

(7) Any transportation control measure including those transportation measures listed in section 108(f) of the Clean Air Act as amended.

(8) Any variation of, or alternative to any measure delineated herein.

(9) Control or prohibition of a fuel or fuel additive used in motor vehicles, if such control or prohibition is necessary to achieve a national primary or seconary air quality standard and is approved by the Administrator under section 211(c)(4)(C) of the Act.

(o) "Reasonably available control technology" (RACT) means devices, systems process modifications, or other apparatus or techniques that are reasonably available taking into account (1) the necessity of imposing such controls in order to attain and maintain a national ambient air quality standard, (2) the social, environmental and economic impact of such controls, and (3) alternative means of providing for attainment and maintenance of such standard. (This provision defines RACT for the purposes of §§ 51.110(c)(2) and 51.341(b) only.)

(p) "Compliance schedule" means the date or dates by which a source or category of sources is required to comply with specific emission limitations contained in an implementation plan and with any increments of progress toward such compliance.

(q) "Increments of progress" means steps toward compliance which will be taken by a specific source, including:

(1) Date of submittal of the source's final control plan to the appropriate air pollution control agency;

(2) Date by which contracts for emission control systems or process modifications will be awarded; or date by which orders will be issued for the purchase of component parts to accomplish emission control or process modification;

(3) Date of initiation of on-site construction or installation of emission control equipment or process change;

(4) Date by which on-site construction or installation of emission control equipment or process modification is to be completed; and

(5) Date by which final compliance is to be achieved.

(r) "Transportation control measure" means any measure that is directed toward reducing emissions of air pollutants from transportation sources. Such measures include, but are not limited to, those listed in section 108(f) of the Clean Air Act.

(s)–(w) [Reserved]

(x) "Time period" means any period of time designated by hour, month, season, calendar year, averaging time, or other suitable characteristics, for which ambient air quality is estimated.

(y) "Variance" means the temporary deferral of a final compliance date for an individual source subject to an approved regulation, or a temporary change to an approved regulation as it applies to an individual source.

(z) "Emission limitation" and "emission standard" mean a requirement established by a State, local government, or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(aa) "Capacity factor" means the ratio of the average load on a machine or equipment for the period of time considered to the capacity rating of the machine or equipment.

(bb) "Excess emissions" means emissions of an air pollutant in excess of an emission standard.

(cc) "Nitric acid plant" means any facility producing nitric acid 30 to 70 percent in strength by either the pressure or atmospheric pressure process.

(dd) "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(ee) "Fossil fuel-fired steam generator" means a furnance or bioler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

(ff) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

(gg) "A stack in existence" means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed within a reasonable time.

(hh)(1) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) Using that portion of a stack which exceeds good engineering practice stack height:

(ii) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(2) The preceding sentence does not include:

(i) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of exhaust gas streams where:

(A) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(B) After July 8, 1985 such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

(iii) Smoke management in agricultural or silvicultural prescribed burning programs;

(iv) Episodic restrictions on residential woodburning and open burning; or

(v) Techniques under § 51.100(hh)(1)(iii) which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

(ii) "Good engineering practice" (GEP) stack height means the greater of:

(1) 65 meters, measured from the ground-level elevation at the base of the stack:

(2)(i) For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required under 40 CFR Parts 51 and 52.

$H_g = 2.5H$,

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation:

(ii) For all other stacks,

$H_g = H + 1.5L$

where

H_g = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack.

L = lesser dimension, height or projected width, of nearby structure(s)

provided that the EPA, State or local control agency may require the use of a field study or fluid model to verify GEP stack height for the source; or

(3) The height demonstrated by a fluid model or a field study approved by the EPA State or local control agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(jj) "Nearby" as used in § 51.100(ii) of this part is defined for a specific structure or terrain feature and

(1) for purposes of applying the formulae provided in § 51.100(ii)(2) means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (½ mile), and

(2) for conducting demonstrations under § 51.100(ii)(3) means not greater than 0.8 km (½ mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (H_t) of the feature, not to exceed 2 miles if such feature achieves a height (H_t) 0.8 km from the stack that is at least 40 percent of the GEP stack height determined by the formulae provided in § 51.100(ii)(2)(ii) of this part or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(kk) "Excessive concentration" is defined for the purpose of determining good engineering practice stack height under § 51.100(ii)(3) and means.

(1) for sources seeking credit for stack height exceeding that established under § 51.100(ii)(2) a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program (40 CFR 51.166 and 52.21), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source

performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the authority administering the State implementation plan, an alternative emission rate shall be established in consultation with the source owner or operator.

(2) for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under § 51.100(ii)(2), either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in paragraph (kk)(1) of this section, except that the emission rate specified by any applicable State implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the authority administering the State implementation plan; and

(3) for sources seeking credit after January 12, 1979 for a stack height determined under § 51.100(ii)(2) where the authority administering the State implementation plan requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by the equations in § 51.100(ii)(2), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(ll)-(mm) [Reserved]

(nn) Intermittent control system (ICS) means a dispersion technique which varies the rate at which pollutants are emitted to the atmosphere according to meteorological conditions and/or ambient concentrations of the pollutant, in order to prevent ground-level concentrations in excess of applicable ambient air quality standards. Such a dispersion technique is an ICS whether used alone, used with other dispersion techniques, or used as a supplement to continuous emission controls (i.e., used as a supplemental control system).

§ 51.101 Stipulations.

Nothing in this part will be construed in any manner:

(a) To encourage a State to prepare, adopt, or submit a plan which does not provide for the protection and enhancement of air quality so as to promote the public health and welfare and productive capacity.

(b) To encourage a State to adopt any particular control strategy without taking into consideration the cost-effectiveness of such control strategy in relation to that of alternative control strategies.

(c) To preclude a State from employing techniques other than those specified in this part for purposes of estimating air quality or demonstrating the adequacy of a control strategy, provided that such other techniques are shown to be adequate and appropriate for such purposes.

(d) To encourage a State to prepare, adopt, or submit a plan without taking into consideration the social and economic impact of the control strategy set forth in such plan, including, but not limited to, impact on availability of fuels, energy, transportation, and employment.

(e) To preclude a State from preparing, adopting, or submitting a plan which provides for attainment and maintenance of a national standard through the application of a control strategy not specifically identified or described in this part.

(f) To preclude a State or political subdivision thereof from adopting or enforcing any emission limitations or other measures or combinations thereof to attain and maintain air quality better than that required by a national standard.

(g) To encourage a State to adopt a control strategy uniformly applicable throughout a region unless there is no satisfactory alternative way of providing for attainment and maintenance of a national standard throughout such region.

§ 51.102 Public hearings.

(a) Except as otherwise provided in paragraph (c) of this section, States must conduct one or more public hearings on the following prior to adoption and submission to EPA of:

(1) Any plan or revision of it required by § 51.104(a).

(2) Any individual compliance schedule under (§ 51.260).

(3) Any revision under § 51.104(d).

(b) Separate hearings may be held for plans to implement primary and secondary standards.

(c) No hearing will be required for any change to an increment of progress in an approved individual compliance schedule unless such change is likely to cause the source to be unable to comply with the final compliance date in the schedule. The requirements of §§ 51.104 and 51.105 will be applicable to such schedules, however.

(d) Any hearing required by paragraph (a) of this section will be held only after reasonable notice, which will be considered to include, at least 30 days prior to the date of such hearing(s):

(1) Notice given to the public by prominent advertisement in the area affected announcing the date(s), time(s), and place(s) of such hearing(s);

(2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located;

(3) Notification to the Administrator (through the appropriate Regional Office);

(4) Notification to each local air pollution control agency which will be significantly impacted by such plan, schedule or revision;

(5) In the case of an interstate region, notification to any other States included, in whole or in part, in the regions which are significantly impacted by such plan or schedule or revision.

(6) In the case of hearings on AQMA plans:

(i) Notification to the chief executives of affected local governments, planning agencies, transportation agencies, environmental control agencies, economic development agencies, and any other affected States, and

(ii) Public notice of alternative analysis and plan development procedures approved under § 51.63.

(e) The State must prepare and retain, for inspection by the Administrator upon request, a record of each hearing. The record must contain, as a minimum, a list of witnesses together with the text of each presentation.

(f) The State must submit with the plan, revision, or schedule a certification that the hearing required by paragraph (a) of this section was held in accordance with the notice required by paragraph (d) of this section.

(g) Upon written application by a State agency (through the appropriate Regional Office), the Administrator may approve State procedures for public hearings. The following criteria apply:

(1) Procedures approved under this section shall be deemed to satisfy the requirement of this part regarding public hearings.

(2) Procedures different from this part may be approved if they—

(i) Ensure public participation in matters for which hearings are required; and

(ii) Provide adequate public notification of the opportunity to participate.

(3) The Administrator may impose any conditions on approval he or she deems necessary.

§51.103 Submission of plans, preliminary review of plans.

(a) The State makes an official submission to the Administrator when it delivers five copies of the plan to the appropriate Regional Office and a letter to the Administrator giving notice of such action. The State must adopt the plan and the Governor or his designee, must submit it to the Administrator as follows:

(1) For any primary standard, or revision thereof, within 9 months after promulgation of such standard.

(2) For any secondary standard, or revision thereof, within 9 months after promulgation of such secondary standard or by such later date prescribed or by such later date prescribed by the Administrator under Subpart R of this part.

(b) Upon request of a State, the Administrator will provide preliminary review of a plan or portion thereof submitted in advance of the date such plan is due. Such requests must be made in writing to the appropriate Regional Office and must be accompanied by five copies of the materials to be reviewed. Requests for preliminary review do not relieve a State of the responsibility of adopting and submitting plans in accordance with prescribed due dates.

§ 51.104 Revisions.

(a) The plan shall be revised from time to time, as may be necessary, to take account of:

(1) Revisions of national standards,

(2) The availability of improved or more expeditious methods of attaining such standards, such as improved technology or emission charges or taxes, or

(3) A finding by the Administrator that the plan is substantially inadequate to attain or maintain the national standard which it implements, or to otherwise comply with any applicable additional requirements established under the Clean Air Act Amendments of 1977.

(b) The State must revise the plan within 60 days following notification by the Administrator under paragraph (a)(3) of this section, or by such later date prescribed by the Administrator after consultation with the State.

(c) States may revise the plan from time to time consistent with the requirements applicable to implementation plans under this part.

(d) The States must submit any revision of any regulation or any compliance schedule under paragraph (c) of this section to the Administrator no later than 60 days after its adoption.

(e) The State must identify and describe revisions other than those covered by paragraphs (a) and (d) of this section.

(f) EPA will approve revisions only after applicable hearing requirements of § 51.102 have been satisfied.

(g) In order for a variance to be considered for approval as a revision to the State implementation plan, the State must submit it in accordance with the requirements of this section.

§51.105 Approval of plans.

The Administrator will approve any plan, or portion thereof, or any revision of such plan, or portion thereof, if he or she determines that it meets the requirements of the Act. Revisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part.

8. a. Subpart G (consisting of §§ 51.110 through 51.119) is added to read as follows:

§ 51.12 [Amended]

b. Paragraphs (e) through (i) of § 51.12 are redesignated as paragraphs (h) through (l) of § 51.110.

Subpart G—Control Strategy

Subpart G—Control Strategy

§ 51.110 Attainment and maintenance of national standards.

(a) Each plan must set forth a control strategy that provides the degree of emission reductions necessary for attainment and maintenance of the national air quality standards. The emission reductions must be sufficient to offset any increases in air quality concentrations that are expected to result from emission increases due to projected growth of population, industrial activity, motor vehicle traffic, or other factors.

(b) Each plan providing for the attainment of a primary standard or revision of it must do so as expeditiously as practicable. The attainment period must not be longer than three years after the date of the Administrator's approval of the plan, unless the State obtains an extension under Subpart R of this part. Each plan must also provide for the maintenance of the standard after it has been attained.

(c)(1) Each plan must provide for the attainment of a secondary standard within a reasonable time after the date of the Administrator's approval of the plan, and must provide for the maintenance of the standard after it has been attained.

(2) "Reasonable time" is defined in two ways as follows:

(i) "Reasonable time" for attainment of a secondary standard must not be more than three years from plan submission unless the State shows that good cause exists for postponing application of the control technology. This definition applies only in a region where the degree of emission reduction necessary for attainment of the secondary standard can be achieved through the application of reasonably available control technology.

(ii) "Reasonable time" will depend on the degree of emission reduction needed for attainment of the secondary standard and on the social, economic, and technological problems involved in carrying out a control strategy adequate for attainment of the secondary standard. This definition applies only in a region where application of reasonably available control technology will not be sufficient for attainment of the secondary standard in three years.

(d) Each plan providing for the attainment of a primary or secondary standard must specify the projected attainment date.

(e) The plan for each Region must have adequate provisions to ensure that stationary sources from within that Region will not:

(1) Prevent attainment and maintenance of any national standard in any portion of an interstate Region or any other Region.

(2) Interfere with measures required to be included in the applicable implementation plan for any such Region to prevent significant deterioration of air quality or to protect visibility.

(f) For purposes of developing a control strategy, data derived from measurements of existing ambient levels of a pollutant may be adjusted to reflect the extent to which occasional natural or accidental phenomena, e.g., dust storms, forest fires, industrial accidents, demonstrably affected such ambient levels during the measurement period.

(g) During developing of the plan, EPA encourages States to identify alternative control strategies, as well as the costs and benefits of each such alternative for attainment or maintenance of the national standard.

* * * * *

§ 51.111 Description of control measures.

Each plan must set forth a control strategy which includes the following:

(a) A description of each control measure that is incorporated into the plan, and a schedule for its implementation.

(b) Copies of the enforceable laws and regulations to implement the measures adopted in the plan.

(c) A description of the administrative procedures to be used in implementing each control measure.

(d) A description of enforcement methods including, but not limited to:

(1) Procedures for monitoring compliance with each of the selected control measures,

(2) Procedures for handling violations, and

(3) A designation of agency responsibility for enforcement of implementation.

§ 51.112 Demonstration of adequacy.

(a) Each plan must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements. The adequacy of a control strategy shall be demonstrated by means of a proporational model or dispersion model or other procedure which is shown to be adequate and appropriate for such purposes.

(b) The demonstration must include the following:

(1) A summary of the computations, assumptions, and judgments used to determine the degree of reduction of emissions (or reductions in the growth of emissions) that will result from the implementation of the control strategy.

(2) A presentation of emission levels expected to result from implementation of each measure of the control strategy.

(3) A presentation of the air quality levels expected to result from implementation of the overall control strategy presented either in tabular form or as an isopleth map showing expected maximum pollutant concentrations.

(4) A description of the dispersion models used to project air quality and to evaluate control strategies.

(5) For interstate regions, the analysis from each constituent State must, where practicable, be based upon the same regional emission inventory and air quality baseline.

§ 51.113 Time period for demonstration of adequacy.

(a) The demonstration of the adequacy of the control strategy to attain a primary standard required under § 51.112 must cover the following periods:

(1) At least three years from the date by which the Administator must approve or disapprove the plan, if no extension under Subpart R is granted, or

(2) At least five years from the date by which the Administrator must approve or disapprove the plan. If an extension under Subpart R is granted.

(b) The demonstration of adequacy to attain a secondary standard required under § 51.112 must cover the period of time determined to be reasonable under § 51.110(c) for attainment of such secondary standard.

§ 51.114 Emissions data and projections.

(a) Except for lead, each plan must contain a detailed inventory of emissions from point and area sources. Lead requirements are specified in § 51.117. The inventory must be based upon measured emissions or, where measured emissions are not available, documented emission factors.

(b) Each plan must contain a summary of emission levels projected to result from application of the new control strategy.

(c) Each plan must identify the sources of the data used in the projection of emissions.

§ 51.115 Air quality data and projections.

(a) Each plan must contain a summary of data showing existing air quality.

(b) Each plan must:

(1) Contain a summary of air quality concentrations expected to result from application of the control strategy, and

(2) Identify and describe the dispersion model, other air quality model, or receptor model used.

(c) Actual measurements of air quality must be used where available if made by methods specified in Appendix C to Part 58 of this chapter. Estimated air quality using appropriate modeling techniques may be used to supplement measurements.

(d) For purposes of developing a control strategy, background concentration shall be taken into consideration with respect to particulate matter. As used in this subpart, background concentration is that portion of the measured ambient levels that cannot be reduced by controlling emissions from man-made sources.

(e) In developing an ozone control strategy for a particular area, background ozone concentrations and ozone transported into an area must be considered. States may assume that the ozone standard will be attained in upwind areas.

§ 51.116 Data availability.

(a) The State must retain all detailed data and calculations used in the preparation of each plan or each plan revision, and make them available for public inspection and submit them to the Administrator at his request.

(b) The detailed data and calculations used in the preparation of plan revisions are not considered a part of the plan.

(c) Each plan must provide for public availability of emission data reported by source owners or operators or otherwise obtained by a State or local agency. Such emission data must be correlated with applicable emission limitations or other measures. As used in this paragraph, "correlated" means presented in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions allowable under the applicable emission limitations or other measures.

§ 51.117 Additional provisions for lead.

In addition to other requirements in §§ 51.100 through 51.116 the following requirements apply to lead. To the extent they conflict, there requirements are controlling over those of the proceeding sections.

(a) *Control strategy demonstration.* Each plan must contain a demonstration showing that the plan will attain and maintain the standard in the following areas:

(1) Areas in the vicinity of the following point sources of lead: Primary lead smelters, Secondary lead smelters, Primary copper smelters, Lead gasoline additive plants, Lead-acid storage battery manufacturing plants that produce 2,000 or more batteries per day. Any other stationary source that actually emits 25 or more tons per year of lead or lead compounds measured as elemental lead.

(2) Any other area that has lead air concentrations in excess of the national ambient air quality standard concentration for lead, measured since January 1, 1974.

(b) *Time period for demonstration of adequacy.* The demonstration of adequacy of the control strategy required under § 51.112 may cover a longer period if allowed by the appropriate EPA Regional Administrator.

(c) *Special modeling provisions.* (1) For urbanized areas with measured lead concentrations in excess of 4.0 $\mu g/m^3$, quarterly mean measured since January 1, 1974, the plan must employ the modified rollback model for the demonstration of attainment as a minimum, but may use an atmospheric dispersion model if desired. If a proportional model is used, the air quality data should be the same year as the emissions inventory required under the paragraph e.

(2) For each point source listed in § 51.117(a), that plan must employ an atmospheric dispersion model for demonstration of attainment.

(3) For each area in the vicinity of an air quality monitor that has recorded lead concentrations in excess of the lead national standard concentration, the plan must employ the modified rollback model as a minimum, but may use an atmospheric dispersion model if desired for the demonstration of attainment.

(d) *Air quality data and projections.*

(1) Each State must submit to the appropriate EPA Regional Office with the plan, but not part of the plan, all lead air quality data measured since January 1, 1974. This requirement does not apply if the data has already been submitted.

(2) The data must be submitted in accordance with the procedures and data forms specified in Chapter 3.4.0 of the "AEROS User's Manual" concerning storage and retrieval of aerometric data (SAROAD) except where the Regional Administrator waives this requirement.

(3) If additional lead air quality data are desired to determine lead air concentrations in areas suspected of exceeding the lead national ambient air quality standard, the plan may include data from any previously collected filters from particulate matter high volume samplers. In determining the lead content of the filters for control strategy demonstration purposes, a State may use, in addition to the reference method, X-ray fluorescence or any other method approved by the Regional Administrator.

(e) *Emissions data.* (1) The point source inventory on which the summary of the baseline lead emissions inventory is based must contain all sources that emit five or more tons of lead per year.

(2) Each State must submit lead emissions data to the appropriate EPA Regional Office with the original plan. The submission must be made with the plan, but not as part of the plan, and must include emissions data and information related to point and area source emissions. The emission data and information should include the information identified in the Hazardous and Trace Emissions System (HATREMS) point source coding forms for all point sources and the area source coding forms for all sources that are not point sources, but need not necessarily be in the format of those forms.

§ 51.118 Stack height provisions.

(a) The plan must provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in § 51.118(b). The plan must provide that before a State submits to EPA a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by § 51.100(ii) (1) or (2), the State must notify the public of the availabilty of the demonstration study and must provide opportunity for a public hearing on it. This section does not require the plan to restrict, in any manner, the actual stack height of any source.

(b) The provisions of § 51.118(a) shall not apply to (1) stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in §§ 51.165(a)(1)(v)(A), 51.166(b)(2)(i) and 52.21(b)(2)(i), were carried out after December 31, 1970; or (2) coal-fired steam electric generating units subject to the provisions of section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were construced under a construction contract awarded before February 8, 1974.

§ 51.119 Intermittent control systems.

(a) The use of an intermittent control system (ICS) may be taken into account in establishing an emission limitation for a pollutant under a State implementation plan, provided:

(1) The ICS was implemented before December 31, 1970, according to the criteria specified in § 51.119(b).

(2) The extent to which the ICS is taken into account is limited to reflect emission levels and associated ambient pollutant concentrations that would result if the ICS was the same as it was before December 31, 1970, and was operated as specified by the operating system of the ICS before December 31, 1970.

(3) The plan allows the ICS to compensate only for emissions from a source for which the ICS was implemented before December 31, 1970, and, in the event the source has been modified, only to the extent the emissions correspond to the maximum capacity of the source before December 31, 1970. For purposes of this paragraph, a source for which the ICS was implemented is any particular structure or equipment the emissions from which were subject to the ICS operating procedures.

(4) The plan requires the continued operation of any constant pollution control system which was in use before December 31, 1970, or the equivalent of that system.

(5) The plan clearly defines the emission limits affected by the ICS and the manner in which the ICS is taken into account in establishing those limits.

(6) The plan contains requirements for the operation and maintenance of the qualifying ICS which, together with the emission limitations and any other necessary requirements, will assure that the national ambient air quality standards and any applicable prevention of significant deterioration increments will be attained and maintained. These requirements shall include, but not necessarily be limited to, the following:

(i) Requirements that a source owner or operator continuously operate and maintain the components of the ICS specified at § 51.119(b)(3) (ii)–(iv) in a manner which assures that the ICS is at least as effective as it was before December 31, 1970. The air quality monitors and meteorological instrumentation specified at § 51.119(b) may be operated by a local authority or other entity provided the source has ready access to the data from the monitors and instrumentation.

(ii) Requirements which specify the circumstances under which, the extent to which, and the procedures through which, emissions shall be curtailed through the activation of ICS.

(iii) Requirements for recordkeeping which require the owner or operator of the source to keep, for periods of at least 3 years, records of measured ambient air quality data, meteorological information acquired, and production data relating to those processes affected by the ICS.

(iv) Requirements for reporting which require the owner or operator of the source to notify the State and EPA within 30 days of a NAAQS violation pertaining to the pollutant affected by the ICS.

(7) Nothing in this paragraph affects the applicability of any new source review requirements or new source performance standards contained in the Clean Air Act or 40 CFR Subchapter C. Nothing in this paragraph precludes a State from taking an ICS into account in establishing emission limitations to any extent less than permitted by this paragraph.

(b) An intermittent control system (ICS) may be considered implemented for a pollutant before December 31, 1970, if the following criteria are met:

(1) The ICS must have been established and operational with respect to that pollutant prior to December 31, 1970, and reductions in emissions of that pollutant must have occurred when warranted by meteorological and ambient monitoring data.

(2) The ICS must have been designed and operated to meet an air quality objective for that pollutant such as an air quality level or standard.

(3) The ICS must, at a minimum, have included the following components prior to December 31, 1970:

(i) *Air quality monitors.* An array of sampling stations whose location and type were consistent with the air quality objective and operation of the system.

(ii) *Meteorological instrumentation.* A meteorological data acquisition network (may be limited to a single station) which provided meteorological prediction capabilities sufficient to determine the need for, and degree of, emission curtailments necessary to achieve the air quality design objective.

(iii) *Operating system.* A system of established procedures for determining the need for curtailments and for accomplishing such curtailments. Documentation of this system, as required by paragraph (n)(4), may consist of a compendium of memoranda or comparable material which define the criteria and procedures for curtailments and which identify the type and number of personnel authorized to initiate curtailments.

(iv) *Meteorologist.* A person, schooled in meteorology, capable of interpreting data obtained from the meteorological network and qualified to forecast meteorological incidents and their effect on ambient air quality. Sources may have obtained meteorological services through a consultant. Services of such a consultant could include sufficient training of source personnel for certain operational procedures, but not for design, of the ICS.

(4) Documentation sufficient to support the claim that the ICS met the criteria listed in this paragraph must be provided. Such documentation may include affidavits or other documentation.

9. Subpart H (consisting of §§ 51.150 through 51.153) is added to read as follows:

Subpart H—Prevention of Air Pollution Emergency Episodes

Subpart H—Prevention of Air Pollution Emergency Episodes

§ 51.150 Classification of regions for episode plans.

(a) This section continues the classification system for episode plans. Each region is classified separately with respect to each of the following pollutants: Sulfur oxides, particulate matter, carbon monoxide, nitrogen dioxide, and ozone.

(b) "Priority I Regions" means any area with greater ambient concentrations than the following:

(1) Sulfur dioxide—100 $\mu g/m^3$ (0.04 ppm) annual arithmetic mean; 455 $\mu g/m^3$ (0.17 ppm) 24-hour maximum.

(2) Particulate matter—95 $\mu g/m^3$ annual geometric mean; 325 $\mu g/m^3$ 24-hour maximum.

(3) Carbon monoxide—55 mg/m^3 (48 ppm) 1-hour maximum; 14 mg/m^3 (12 ppm) 8-hour maximum.

(4) Nitrogen dioxide—100 $\mu g/m^3$ (0.06 ppm) annual arithmetic mean.

(5) Ozone—195 $\mu g/m^3$ (0.10 ppm) 1-hour maximum.

(c) "Priority IA Region" means any area which is Priority I primarily because of emissions from a single point source.

(d) "Priority II Region" means any area which is not a Priority I region and has ambient concentrations between the following:

(1) Sulfur Dioxides—60–100 $\mu g/m^3$ (0.02–0.04 ppm) annual arithmetic mean; 260–445 $\mu g/m^3$ (0.10–0.17 ppm) 24-hour maximum; any concentration above 1,300 $\mu g/m^3$ (0.50 ppm) three-hour average.

(2) Particulate matter—60–95 $\mu g/m^3$ annual geometric mean; 150–325 $\mu g/m^3$ 24-hour maximum.

(e) In the absence of adequate monitoring data, appropriate models must be used to classify an area under paragraph (b) of this section. Information on these models may be found through the "Air Programs Reports and Guidelines Index," EPA-150/2-82-016. With respect to carbon monoxide, ozone, and nitrogen dioxide, any area whose urban population as defined in the most recent U.S. Bureau of the Census, exceeds 200,000 will be classified Priority I.

(f) Areas which do not meet the above criteria are classified Priority III.

§ 51.151 Significant harm levels.

Each plan for a Priority I region must include a contingency plan which must, as a mimimum, provide for taking action necessary to prevent ambient pollutant concentrations at any location in such region from reaching the following levels:

Sulfur dioxide—2.620 $\mu g/m^3$ (1.0 ppm) 24-hour average.

Particulate matter—1,000 $\mu g/m^3$ (24-hour average.

Sulfur dioxide and particulate matter combined—product of sulfur dioxide in ug/m^3 24-hour average, and particulate matter in ug/m^3 24-hour average equal to 490×10^3.

Carbon monoxide—57.5 mg/m^3 (50 ppm) 8-hour average; 86.3 mg/m^3 (75 ppm) 4-hour average; 144 mg/m^3 (125 ppm) 1-hour average.

Ozone—1,200 ug/m^3 (0.6 ppm) 2-hour average.

Nitrogen dioxide—3.750 ug/m^3 (2.0 ppm) 1-hour average; 938 ug/m^3 (0.5 ppm) 24-hour average.

§ 51.152 Contingency plans

(a) Each contingency plan must—

(1) Specify two or more stages of episode criteria such as those set forth in Appendix L to this part, or their equivalent;

(2) Provide for public announcement whenever any episode stage has been determined to exist; and

(3) Specify adequate emission control actions to be taken at each episode stage. (Examples of emission control actions are set forth in Appendix L.)

(b) Each contingency plan for a Priority I region must provide for the following:

(1) Prompt acquisition of forecasts of atmospheric stagnation conditions and of updates of such forecasts as frequently as they are issued by the National Weather Service.

(2) Inspection of sources to ascertain compliance with applicable emission control action requirements.

(3) Communications procedures for transmitting status reports and orders as to emission control actions to be taken during an episode stage, including procedures for contact with public officials, major emission sources, public health, safety, and emergency agencies and news media.

(c) Each plan for a Priority IA and II region must include a contingency plan that meets, as a minimum, the requirements of paragraphs (b)(1) and (b)(2) of this section. Areas classified Priority III do not need to develop episode plans.

(d) Notwithstanding the requirements of paragraphs (b) and (c) of this section, the Administrator may, at his discretion—

(1) Exempt from the requirements of this section those portions of Priority I, IA, or II regions which have been designated as attainment or unclassifiable for national primary and secondary standards under section 107 of the Act; or

(2) Limit the requirements pertaining to emission control actions in Priority I regions to—

(i) Urbanized areas as identified in the most recent United States Census, and

(ii) Major emitting facilities, as defined by section 169(1) of the Act, outside the urbanized areas.

§ 51.153 Reevaluation of episode plans.

(a) States should periodically reevaluate priority classifications of all Regions or portion of Regions within their borders. The reevaluation must consider the three most recent years of air quality data. If the evaluation indicates a change to a higher priority classification, appropriate changes in the episode plan must be made as expeditiously as practicable.

10. Sections 51.160 through 51.165 are added, and § 51.166 is designated from § 51.24 to comprise Subpart I. The table fo contents for Subpart I and the newly added sections read as follows:

Subpart I—Review of New Sources and Modifications

Subpart I—Review of New Sources and Modifications

§ 51.160 Legally enforceable procedures.

(a) Each plan must set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in—

(1) A violation of applicable portions of the control strategy; or

(2) Interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State.

(b) Such procedures must include means by which the State or local agency responsible for final decisionmaking on an application for approval to construct or modify will prevent such construction or modification if—

(1) It will result in a violation of applicable portions of the control strategy; or

(2) It will interfere with the attainment or maintenance of a national standard.

(c) The procedures must provide for the submission, by the owner or operator of the building, facility, structure, or installation to be constructed or modified, of such information on—

(1) The nature and amounts of emissions to be emitted by it or emitted by associated mobile sources;

(2) The location, design, construction, and operation of such facility, building, structure, or installation as may be necessary to permit the State or local agency to make the determination referred to in paragraph (a) of this section.

(d) The procedures must provide that approval of any construction or modification must not affect the responsibility to the owner or operator to comply with applicable portions of the control strategy.

(e) The procedures must identify types and sizes of facilities, buildings, structures, or installations which will be subject to review under this section. The plan must discuss the basis for determining which facilities will be subject to review.

(f) The procedures must discuss the air quality data and the dispersion or other air quality modeling used to meet the requirements of this subpart.

§ 51.161 Public availability of information.

(a) The legally enforceable procedures in § 51.160 must also require the State or local agency to provide opportunity for public comment on information submitted by owners and operators. The public information must include the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval.

(b) For purposes of paragraph (a) of this section, opportunity for public comment shall include, as a minimum—

(1) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the State or local agency's analysis of the effect on air quality;

(2) A 30-day period for submittal of public comment; and

(3) A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in paragraph (b)(1) of this section.

(c) Where the 30-day comment period required in paragraph (b) of this section would conflict with existing requirements for acting on requests for permission to construct or modify, the State may submit for approval a comment period which is consistent with such existing requirements.

(d) A copy of the notice required by paragraph (b) of this section must also be sent to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in the region in which such new or modified installation will be located. The notice also must be sent to any other agency in the region having responsibility for implementing the procedures required under this subpart. For lead, a copy of the notice is required for all point sources. The definition of point for lead is given in § 51.100(k)(2).

§ 51.162 Identification of responsible agency.

Each plan must identify the State or local agency which will be responsible for meeting the requirements of this subpart in each area of the State. Where such responsibility rests with an agency other than an air pollution control agency, such agency will consult with the appropriate State or local air pollution control agency in carrying out the provisions of this subpart.

§ 51.163 Administrative procedures.

The plan must include the administrative procedures, which will be followed in making the determination specified in paragraph (a) of § 51.160.

§ 51.164 Stack height procedures.

Such procedures must provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in § 51.118(b). Such procedures must provide that before a State issues a permit to a source based on a good engineering practice stack height that exceeds the height allowed by § 51.100(ii) (1) or (2), the State must notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it. This section does not require such procedures to restrict in any manner the actual stack height of any source.

§ 51.165 Permit requirements.

(a) State Implementation Plan provisions satisfying sections 172(b)(6) and 173 of the Act shall meet the following conditions:

(1) All such plans shall use the specific definitions. Deviations from the following wording will be approved only if the state specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definition below:

(i) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

(ii) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972,* as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(iii) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(iv)(A) "Major stationary source" means:

(*1*) Any stationary source of air pollutants which emits, or has the potential to emit 100 tons per year or more of any pollutant subject to regulation under the Act, or

(*2*) Any physical change that would occur at a stationary source not qualifying under paragraph (a)(1)(iv)(A)(*1*) as a major stationary source, if the change would constitute a major stationary source by itself.

(B) A major stationary source that is major for volatile organic compounds shall be considered major for ozone

(C) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(*1*) Coal cleaning plants (with thermal dryers);

(*2*) Kraft pulp mills;

(*3*) Portland cement plants;

(*4*) Primary zinc smelters;

(*5*) Iron and steel mills;

(*6*) Primary aluminum ore reduction plants;

(*7*) Primary copper smelters;

(*8*) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(*9*) Hydrofluoric, sulfuric, or nitric acid plants;

(*10*) Petroleum refineries;

(*11*) Lime plants;

(*12*) Phosphate rock processing plants;

(*13*) Coke oven batteries;

(*14*) Sulfur recovery plants;

(*15*) Carbon black plants (furnace process);

(*16*) Primary lead smelters;

(*17*) Fuel conversion plants;

(*18*) Sintering plants;

(*19*) Secondary metal production plants;

(*20*) Chemical process plants;

(*21*) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(*22*) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(*23*) Taconite ore processing plants;

(*24*) Glass fiber processing plants;

(*25*) Charcoal production plants;

(*26*) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(*27*) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(v)(A) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(B) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(C) A physical change or change in the method of operation shall not include:

(*1*) Routine maintenance, repair and replacement;

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

(*3*) Use of an alternative fuel by reason of an order or rule section 125 of the Act;

(*4*) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(*5*) Use of an alternative fuel or raw material by a stationary source which;

(*i*) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or § 51.166, or

(*ii*) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(*6*) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51 Subpart I or 40 CFR 51.166.

(*7*) Any change in owenership at a stationary source.

(vi)(A) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(C) An increase or decrease in actual emissions is creditable only if:

(*1*) It occurs within a reasonable period to be specified by the reviewing authority; and

(*2*) The reviewing authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section which permit is in effect when the increase in actual emissions from the particular change occurs.

(D) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(E) A decrease in actual emissions is creditable only to the extent that:

(*1*) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(*2*) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(*3*) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

(*4*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(F) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(vii) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the the Act.

(viii) "Secondary emissons" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction of operation of the major stationary source of major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(ix) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

(x) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutions, a rate of emissions that would equal or exceed any of the following rates:

Pollutant Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

(xi) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(A) The applicable standards set forth in 40 CFR Part 60 or 61;

(B) Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or

(C) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(xii)(A) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with paragraphs (a)(1)(xii)(B) through (D) of this section.

(B) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(C) The reviewing authority may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(D) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(xiii) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

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

(B) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within or stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(xiv) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to this section, 40 CFR Part 51 Subpart I, or § 51.166.

(xv) "Begin actual construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(xvi) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(xvii) "Necessary preconstruction approvals or permits" means those Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(xviii) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(2) Each plan shall adopt a preconstruction review program to satisfy the requirements of sections 172(b)(6) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under 40 CFR 81.300 *et seq.* Such a program shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment, if the stationary source or modification would locate anywhere in the designated nonattainment area.

(3)(i) Each plan shall provide that for sources and modifications subject to any preconstruction review program adopted pursuant to this subsection the baseline for determining credit for emissions reductions is the emissions limit under the applicable State Implementation Plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where;

(A) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(B) The applicable State Implementation Plan does not contain an emissions limitation for that source or source category.

(ii) The plan shall further proivide that:

(A) Where the emissions limit under the applicable State Implementation Plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(B) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable State Implementation Plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The reviewing authority should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches,

(C) Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, provided that the work force to be affected has been notified of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emissions offset credit. However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one year prior to the date of permit application whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment credit for such shutdown or curtailment may be applied to offset emissions from the new source.

(D) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977; (This document is also available from Mr. Ted Creekmore, Office of Air Quality Planning and Standards, (MD-15) Research Triangle Park, NC 27711.))

(E) All emission reductions claimed as offset credit shall be federally enforceable;

(F) Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in 40 CFR Part 51 Appendix S section IV.D.

(G) Credit for an emissions reduction can be claimed to the extent that the reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the State has not relied on it in demonstration attainment or reasonable further progress.

(4) Each plan may provide that the provisions of this paragraph do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emission to the extent quantifiable are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or citric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(5) Each plan shall include enforceable procedures to provide that:

(i) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, State or Federal law.

(ii) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification;

(b) Each plan shall adopt a preconstruction review permit program or its equivalent to satisfy the requirements of section 110(a)(2)(D)(i) of the Act for any area designated as attainment or unclassifiable for any national ambient air quality standard under 40 CFR 81.300 *et seq.* Such a program or its equivalent shall apply to any new major stationary source or major modification that would locate in a designated attainment or the unclassifiable area and would exceed the significant increments specified in section III.A. of the Emission Offset Interpretive Ruling Appendix S to this part.

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

11. Subpart K (consisting of §§ 51.210 through 51.214), Subpart L (consisting of §§ 51.230 through 51.232), and subpart N (consisting of §§ 51.260 through 51.262) are added to read as follows:

Subpart K—Source Surveillance

Subpart L—Legal Authority

* * * * *

Subpart N—Compliance Schedules

Subpart K—Source Surveillance

§ 51.210 General.

Each plan must provide for monitoring the status of compliance with any rules and regulations that set forth any portion of the control strategy. Specifically, the plan must meet the requirements of this subpart.

§ 51.211 Emission reports and recordkeeping.

The plan must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of and periodically report to the State—

(a) Information on the nature and amount of emissions from the stationary sources; and

(b) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control strategy.

§ 51.212 Testing, inspection, enforcement, and complaints.

The plan must provide for—

(a) Periodic testing and inspection of stationary sources; and

(b) Establishment of a system for detecting violations of any rules and regulations through the enforcement of appropriate visible emission limitations and for investigating complaints.

§ 51.213 Transportation control measures.

(a) The plan must contain procedures for obtaining and maintaining data on actual emissions reductions acheived as a result of implementing transportation control measures.

(b) In the case of measures involving inspection, maintenance, or retrofit, these data must include the results of an emission surveillance program designed to determine actual average per vehicle emissions reductions attributable to inspection, maintenance, and/or retrofit.

(c) In the case of measures based on traffic flow changes or reductions in vehicle use, the data must include observed changes in vehicle miles traveled and average speeds.

(d) The data must be maintained in such a way as to facilitate comparison of the planned and actual efficacy of the transportation control measures.

§ 51.214 Continuous emission monitoring.

(a) The plan must contain legally enforceable procedures to—

(1) Require stationary sources subject to emission standards as part of an applicable plan to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions; and

(2) Provide other information as specified in Appendix P of this part.

(b) The procedures must—

(1) Identify the types of sources, by source category and capacity, that must install the equipment; and

(2) Identify for each source category the pollutants which must be monitored.

(c) The procedures must, as a minimum, require the types of sources set forth in Appendix P of this part to meet the applicable requirements set forth therein.

(d)(1) The procedures must contain provisions that require the owner or operator of each source subject to continuous emission monitoring and recording requirements to maintain a file of all pertinent information for at least two years following the date of collection of that information.

(2) The information must include emission measurements, continuous monitoring system performance testing measurements, performance evaluations, calibration checks, and adjustments and maintenance performed on such monitoring systems and other reports and records required by Appendix P of this part.

(e) The procedures must require the source owner or operator to submit information relating to emissions and operation of the emission monitors to the State to the extent described in Appendix P at least as frequently as described therein.

(f) (1) The procedures must provide that sources subject to the requirements of paragraph (c) of this section must have installed all necessary equipment and shall have begun monitoring and recording within 18 months after either—

(i) The approval of a State plan requiring monitoring for that source; or

(ii) Promulgation by the Agency of monitoring requirements for that source.

(2) The State may grant reasonable extensions of this period to sources that—

(i) Have made good faith efforts to purchases, install, and begin the monitoring and recording of emission data; and

(ii) Have been unable to complete the installation within the period.

Subpart L—Legal Authority

§ 51.230 Requirements for all plans.

Each plan must show that the State has legal authority to carry out the plan, including authority to:

(a) Adopt emission standards and limitations and any other measures necessary for attainment and maintenance of national standards.

(b) Enforce applicable laws, regulations, and standards, and seek injunctive relief.

(c) Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons, i.e., authority comparable to that available to the Administrator under section 305 of the Act.

(d) Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard.

(e) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources.

(f) Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; also authority for the State to make such data available to the public as reported and as correlated with any applicable emission standards or limitations.

§ 51.231 Identification of legal authority.

(a) The provisions of law or regulation which the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations be submitted with the plan.

(b) The plan must show that the legal authorities specified in this subpart are available to the State at the time of submission of the plan.

(c) Legal authority adequate to fulfill the requirements of § 51.230 (e) and (f) of this subpart may be delegated to the State under section 114 of the Act.

§ 51.232 Assignment of legal authority to local agencies.

(a) A State government agency other than the State air pollution control agency may be assigned responsibility for carrying out a portion of a plan if the plan demonstrates to the Administrator's satisfaction that the State governmental agency has the legal authority necessary to carry out the portion of plan.

(b) The State may authorize a local agency to carry out a plan, or portion thereof, within such local agency's jurisdiction if—

(1) The plan demonstrates to the Administrator's satisfaction that the local agency has the legal authority necessary to implement the plan or portion of it; and

(2) This authorization does not relieve the State of responsibility under the Act for carrying out such plan, or portion thereof.

Subpart N—Compliance Schedules

§ 51.260 Legally enforceable compliance schedules.

(a) Each plan shall contain legally enforceable compliance schedules setting forth the dates by which all stationary and mobile sources or categories of such sources must be in compliance with any applicable requirement of the plan.

(b) The compliance schedules must contain increments of progress required by § 51.262 of this subpart.

§ 51.261 Final compliance schedules.

(a) Unless EPA grants an extension under Subpart R, compliance schedules designed to provide for attainment of a primary standard must—

(1) Provide for compliance with the applicable plan requirements as soon as practicable; or

(2) Provide for compliance no later than the date specified for attainment of the primary standard under;

(b) Unless EPA grants an extension under Subpart R, compliance schedules designed to provide for attainment of a secondary standard must—

(1) Provide for compliance with the applicable plan requirements in a reasonable time; or

(2) Provide for compliance no later than the date specified for the attainment of the secondary standard under § 51.110(c).

§ 51.262 Extension beyond one-year.

(a) Any compliance schedule or revision of it extending over a period of more than one year from the date of its adoption by the State agency must provide for legally enforceable increments of progress toward compliance by each affected source or category of sources. The increments of progress must include—

(1) Each increment of progress specified in § 51.100(q); and

(2) Additional increments of progress as may be necessary to permit close and effective supervision of progress toward timely compliance.

(b) [Reserved]

Subpart O—Miscellaneous Plan Content Requirements [Amended]

12. Sections 51.280 and 51.281 are added to Subpart O to read as follows:

§ 51.280 Resources.

Each plan must include a description of the resources available to the State and local agencies at the date of submission of the plan and of any additional resources needed to carry out the plan during the 5-year period following its submission. The description must include projections of the extent to which resources will be acquired at 1-, 3-, and 5-year intervals.

§ 51.281 Copies of rules and regulations.

Emission limitations and other measures necessry for attainment and maintenance of any national standard, including any measures necessary to implement the requirements of Subpart L must be adopted as rules and regulations enforceable by the State agency. Copies of all such rules and regulations must be submitted with the plan. Submittal of a plan setting forth proposed rules and regulations will not satisfy the requirements of this section nor will it be considered a timely submittal.

13. Subpart R consisting of §§ 51.340 and 51.341 is added as follows:

Subpart R—Extensions

Subpart R—Extensions

§ 51.340 Request for 2-year extension.

(a) The Governor of a State may, at the time of submission of a plan to implement a primary standard, request the Administrator to extend, for a period not exceeding 2 years, the 3-year period prescribed by the Act for attainment of the primary standard in such region.

(b) Any such request regarding an interstate region must be submitted jointly with the requests of Governors of all States in the region, or shall show that the Governor of each State in the region has been notified of such a request.

(c) Any such request regarding attainment of a primary standard must be submitted together with a plan which shall:

(1) Set forth a control strategy adequate for attainment of such primary standard.

(2) Show that the necessary techology or alternatives will not be available soon enough to permit full implementation of such control strategy within such 3-year period, i.e., one or more emission sources or classes of sources will be unable to comply with applicable portions of the control strategy.

(3) Provide for attainment of such primary standard as expeditiously as practicable, but in no case later than 5 years after the date of the Administrator's approval of such plan.

(d) Any showing pursuant to paragraph (c) of this section must include the following:

(1) A clear identification of stationary emission sources or classes of moving sources which will be unable to comply with the applicable portions of such control strategy within a 3-year period because the necessary technology or alternatives will not be available soon enough to permit such compliance.

(2) A clear identification and justification of any assumptions made with the respect to the time at which the necessary technology or alternatives will be available.

(3) A clear identification of any alternative means of attainment of such primary standard which were considered and rejected.

(4) A showing that stationary emission sources or classes of moving sources other than those identified pursuant to paragraph (d)(1) of this section will be required to comply, within such 3-year period, with any applicable portions of such control strategy.

(5) A showing that reasonable interim control measures are provided for in

such plan with respect to emissions from the source(s) identified pursuant to paragraph (d)(1) of this section.

§ 51.341 Request for 18-month extension.

(a) Upon request of the State made in accordance with this section, the Administrator may, whenever he determines necessary, extend, for a period not to exceed 18 months, the deadline for submitting that portion of a plan that implements a secondary standard.

(b) Any such request must show that attainment of the secondary standards will require emission reductions exceeding those which can be achieved through the application of reasonably available control technology.

(c) Any such request for extension of the deadline with respect to any State's portion of an interstate region must be submitted jointly with requests for such extensions from all other States within the region or must show that all such States have been notified of such request.

(d) Any such request must be submitted sufficiently early to permit development of a plan prior to the deadline in the event that such request is denied.

§ 51.327 [Amended]

14. Section 51.327 is amended by changing the term "§ 51.6" to "§ 51.104."

§ 51.328 [Removed and reserved]

15. Section 51.328 is removed and reserved.

Appendices A through H, K, M O, and R [Removed and Reserved]

16. Appendices A through H, K, M, O, and R are removed and reserved.

Appendix L [Amended]

17. The first paragraph of Appendix L is revised to read as follows:

Appendix L—Example Regulations for Prevention of Air Pollution Emergency Episodes

The example regulations presented herein reflect generally recognized ways of preventing air pollution from reaching levels that would cause imminent and substantial endangerment to the health of persons. States are required under Subpart H to have emergency episodes plans but they are not required to adopt the regulations presented herein.

* * * * *

18. In Appendix L, section 1.1(b) is amended by changing the term "Ozone $(O_3)=200$ ug/m³ (0.1ppm) 1-hour average" to "Ozone $(O_3)=400$ ug/m³ (0.2 ppm)-hour average."

19. In Appendix L, section 1.1 (b), (c), and (d) the paragraphs for NO_2 are revised and a paragraph is added to read as follows:

* * * * *

(b) * * *

NO_2–1130 $\mu g/m^3$ (0.6ppm) 1-hour average, 282 $\mu g/m^3$ (0.15 ppm) 24-hour average.

In addition to the levels listed for the above pollutants, meterological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

(c) * * *

NO_2–2260 $\mu g/m^3$ (1.2 ppm), 1-hour average; 565 $\mu g/m^3$ (0.3 ppm), 24-hour average.

In addition to the levels listed for the above pollutants, meterological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

(d) * * *

NO_2–3,000 $\mu g/m^3$ (1.6 ppm), 1-hour average; 750 $\mu g/m^3$ (0.4 ppm), 24-hour average.

In addition to the levels listed for the above pollutants, meterological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

§§ 51.61 and 51.166 [Amended]

20. The following sections are amended by removing the reference to "§ 51.4" and replacing it with "§ 51.102": § 51.61(e), § 51.166(a)(5), (g)(2)(i).

§§ 51.40 and 51.41 [Amended]

21. The following sections are amended by removing the reference to "§ 51.12(f)" and replacing it with "§ 51.110(i)": § 51.40(a), (b), § 51.41.

22. The following sections are amended by removing the reference to "§ 51.12(i)" and replacing it with "§ 51.110(l)": § 51.40(a), (b), § 51.41.

§§ 51.54 and 51.166 [Amended]

23. The following sections are amended by removing the reference to "§ 51.18" and replacing it with "Subpart I": § 51.54(e)(b)(17), § 51.166(b)(2)(iii)(*e*)(*1*), (b)(2)(iii)(*f*).

§51.166 [Amended]

24. The following paragraphs are amended by removing the reference to "§ 51.24" and replacing it with "§51.166": § 51.166(b)(2)(iii)(*e*)(*1*), (b)(2)(iii)(*e*)(*2*), (b)(2)(iii)(*f*), (b)(14)(i)(*b*), (b)(14)(ii)(*a*), (b)(15)(ii)(*b*), (b)(17), (f)(3), (i)(9).

Appendix P—[Amended]

25. In Appendix P, section 1.0 is amended by removing the reference to "§ 51.19(e)" and replacing it with "§ 51.165(b)":

26. In Appendix P, section 4.0 is amended by removing the reference to "§ 51.19(e)(3) and (4)" and replacing it with "§ 51.214(d) and (e)":

Appendix S—[Amended]

27. In Appendix S, the following sections are amended by removing the reference to "§ 51.18" and replacing it with "Subpart I": I, II. (A)(5)(iii)(*f*), II. (A)(5)(iii)(*e*)(*1*), II. (A)(12.

28. In Appendix S, section III.A is amended by removing the reference to "§ 51.18(k)" and replacing it with "§ 51.165(b)":

29. In Appendix S, the following sections are amended by removing the reference to "§ 51.24" and replacing it with "§ 51.166": II. (A)(5)(iii)(*e*)(*1*), II. (A)(12), II. (A)(5)(iii)(*f*).

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 52.771 [Amended]

1A. The following paragraphs are amended by removing the references to "§ 51.3(a)," and § 51.3(b)" and replacing them with "§ 51.150": § 52.771(b), (c), (d).

PART 52—[AMENDED]

2. The following sections are amended by removing the reference to "§ 51.4" and replacing it with "§ 51.102": § 52.21(f)(1), (g)(2)(i), § 52.876(c)(2), § 52.1602(a), § 52.2056(a), § 52.2080(b)(3), § 52.2232(d), § 52.2345(a), § 52.2282(a).

§ 52.1487 [Amended]

3. The following section is amended by removing the reference to "§ 51.4 (a)(2)" and replacing it with "§ 51.102 (a) and (e)": § 52.1487(a).

§ 52.497 and 52.2056 [Amended]

4. The following sections are amended by removing the reference to "§ 51.5" and replacing it with "§ 51.103:" § 52.497(a), § 52.2056(a).

5. The following sections are amended by removing the reference to "§ 51.6" and replacing it with "§ 51.104": § 52.55(a), § 52.240(f)(1), § 52.576(a), § 52.677(b), § 52.730(c), § 52.778(c), § 52.825(c), § 52.828(b)(1)(iii), § 52.876(c), § 52.927(c), § 52.980(a), § 52.980(b), (c), § 52.980(d), § 52.1175(e), § 52.1274(a), § 52.1335(a), § 52.1425(a), § 52.1626(b), § 52.1774(a), § 52.1830(a),

§ 52.2078(b)(iii), § 52.2080(a), (b)(1)(iii), § 52.2123(b), § 52.2435(a), § 52.2578(d).

§§ 52.828 and 52.2078 [Amended]

6. The following sections are amended by removing the reference to "§ 51.8" and replacing it with "§ 51.105": § 52.828(b)(1)(iii), § 52.2078(b)(1)(iii).

§ 52.2424 [Amended]

7. The following section is amended by removing the reference to "§ 51.10(b)" and replacing it with "§ 51.110(b)(d)": § 52.2424(a).

§ 52.795 [Amended]

8. The following section is amended by removing the reference to "§ 51.10(d)" and replacing it with "§ 51.110(e)": § 52.795(c).

9. The following sections are amended by removing the reference to "§ 51.10(e)" and replacing it with "§ 51.116(c)": § 52.73(a), § 52.178(a), § 52.224(a), (c), § 52.525(a), § 52.624(a), § 52.925(a), § 52.1113(a), § 52.1224(a), § 52.1277(a), § 52.1324(a), § 52.1378(a), § 52.1473(a), § 52.1526(a), § 52.1574(a), § 52.1623(a), § 52.2024(a), § 52.2073(a), § 52.2274(a), § 52.2374(a), § 52.2573(a), § 52.2725(a).

§ 52.74 [Amended]

10. The following section is amended by removing the reference to "§ 51.11" and replacing it with "§ 51.230": § 52.74(a).

§ 52.74 and 52.2224 [Amended]

11. The following sections are amended by removing the reference to "§ 51.11(a)(2)" and replacing it with "§ 51.230(b)": § 52.74(a)(1)(iv), (a)(2)(i), § 52.2224(c), (d), (e).

12. The following sections are amended by removing the reference to "§ 51.11(a)(3)" and replacing it with "§ 51.230(c)": § 52.74(a)(2)(v), § 52.225(a), § 52.1325(b)(5)(i), § 52.2224(a).

13. The following sections are amended by removing the reference to "§ 51.11(a)(4)" and replacing it with "§ 51.230(d)": § 52.74(b), § 52.324(c), § 52.775(2)(i), (a)(7)(iii), (a)(8)(ii), (a)(9)(i), (a)(10)(iii), § 52.874(c), § 52.1275(a), § 52.1325(c), § 52.2124(d), § 52.2224(b).

14. The following sections are amended by removing the reference to "§ 51.11(a)(5)" and replacing it with "§ 51.230(e)": § 52.74(a)(1)(i), (a)(2)(ii), § 52.775(a)(1)(i), (a)(2)(ii), (a)(3)(i), (a)(4)(i), (a)(5)(i), (a)(6)(i), (a)(7)(i), (a)(9)(ii), (a)(10)(i), § 52.1325(b)(1)(i), (b)(2)(i), (b)(2)(ii), (b)(3)(i), (b)(4)(i), (b)(5)(ii), § 52.2074(a).

15. The following sections are amended by removing the reference to "§ 51.11(a)(6)" and replacing it with "§ 51.230(f)": § 52.74(a)(1)(ii), (a)(1)(iii), (a)(2)(iii), (a)(2)(iv), (c), § 52.775(a)(5)(ii), § 52.179(a), § 52.225(b), § 52.324(a), § 52.526(a), § 52.625(a), § 52.674(a), § 52.775(a)(1)(ii), (a)(2)(iii), (a)(3)(ii), (a)(4)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(i), (a)(9)(iii), (a)(10)(ii), § 52.1325(b)(4)(ii), (b)(5)(iii), (a)(11)(i), § 52.874(a), (b)(1)(i), (b)(2)(i), (b)(3)(i), § 52.924(a), § 52.1074(a), § 52.1275(b), (b)(1)(ii), (b)(2)(iii), § 52.1379(a), § 52.1575(a), § 52.2025(a), § 52.2074(b), § 52.2173(a), § 52.2333(a), § 52.2373(a), § 52.2574(a), § 52.2726(a).

16. The following sections are amended by removing the reference to "§ 51.11(b)" and replacing it with "Subpart L": § 52.74(a)(2)(iv), § 52.784(a), § 52.1227(a), § 52.1974(a).

§ 52.2430 [Amended]

17. The following section is amended by removing the reference to "§ 51.11(c)" and replacing it with "§ 51.231(a)": § 52.2 430(a).

18. The following sections are amended by removing the reference to "§ 51.11(f)" and replacing it with "§ 51.232(b)": § 52.775(a), § 52.874(b), § 52.1325(b), § 52.2430(b), § 52.2475(a).

§ 52.2678 [Amended]

19. The following section is amended by removing the reference to "§ 51.12(a)" and replacing it with "§ 51.110(a)": § 52.2678(a).

20. The following sections are amended by removing the reference to "§ 51.12(e)" and replacing it with "§ 51.110(h)": § 52.95(a), § 52.182(a), § 52.431(a), § 52.497(a), § 52.631(a), § 52.735(a), § 52.792(a), § 52.883(b), § 52.1115(a), § 52.1602(a), § 52.1883(a), § 52.2056(a), § 52.2176(a), § 52.2232(a), § 52.2345(a).

21. The following sections are amended by removing the reference to "§ 51.12(e) and (f)" and replacing it with "§ 51.110(h) and (i)": § 52.59(a), § 52.95(b), § 52.143(a), § 52.182(b), § 52.267(a), § 52.341(a), § 52.379(a), § 52.431(b), § 52.497(b), § 52.529(a), § 52.580(a), § 52.631(b), § 52.682(a), § 52.735(b), § 52.792(b), § 52.832(a), § 52.883(a), (b), § 52.929(a), § 52.1028(a), § 52.1115(b), § 52.1178(a), § 52.1229(a), § 52.1279(a), § .1338(a), § .1381(a), § 52.1528(a), § 52.1602(b), § 52.1688(a), § 52.1777(a), § 52.1827(a), § 52.1883(b), § 52.1927(a), § 52.1986(a), § 52.2249(a), § 52.2056(b), § 52.2082(a), § 52.2129(a), § 52.2176(b), § 52.2232(b), § 52.2302(a), § 52.2345(b), § 52.2379(a), § 52.2449(a), § 52.2496(a), § 52.2526(a), § 52.2580(a), § 52.2631(a), § 52.2674(a), § 52.2728(a), § 52.2778(a), § 52.2826(a).

22. The following sections are amended by removing the reference to "§ 51.13(e)" and replacing it with "Subpart G": § 52.57(a), § 52.125(a) (1) (b), § 52.126(a), § 52.133(c), § 52.227(a), § 52.675(a) (1), § 52.676(a)(1), § 52.776(a), § 52.1475(a), § 52.1476(a), § 52.1678(d), § 52.1880(a), § 52.1881(a), § 52.1976(a), § 52.2678(a), § 52.2731(a), § 52.2780(a).

§§ 52.794, 52.1117 and 52.2525 [Amended]

23. The following sections are amended by removing the reference to "51.13(e)(1)" and replacing it with "§ 51.112(a)": § 52.794(b), § 52.1117(b), § 52.2525(a).

24. The following sections are amended by removing the reference to "§ 51.14," and replacing it with "Subpart G": § 52.269(a), § 52.729(a), § 52.777(a), (b), § 52.784(a), § 52.785(a), § 52.1227(a), § 52.1486(a), § 52.1676(a), § 52.1877(a).

§§ 52.2431 [Amended]

25. The following section is amended by removing the reference to "§ 51.14(c)" and replacing it with "§ 51.112": § 52.2431 (d).

26. The following paragraphs are amended by removing the references to "§ 51.14(a)(2)," "§ 51.14(a)(1) (b) and (c)," "§ 51.14(a)(2) (iii), and (iv) and replacing them with "§ 51.111": § 52.2431(a), (b), (c).

27. The following sections are amended by removing the reference to "§ 51.15" and replacing it with "Subpart N": § 52.07(a), § 52.20, § 52.55(a), § 52.84(b), § 52.240(e), (f)(1), (f)(2), § 52.429(a), § 52.524(c), § 52.576(a), § 52.626(a), § 52.677(b), (c) § 52.730(c), (d), § 52.778(c), (d), § 52.825(c), § 52.876(c) (1) and (2), § 52.927(c), § 52.980(a), (b), (c), (d), § 52.1023(a), § 52.1125(a), (b), § 52.1175(e), § 52.1274(a), § 52.1335(a), (b), § 52.1425(a), § 52.1482(b), (c), § 52.1524(a), (c), (d), § 52.1577(e), § 52.1626(b), § 52.1774(a), § 52.1830(a), § 52.1975(b), § 52.2036(a), § 52.2077(b), (c), (d), § 52.2123(b), § 52.2223(c), (d), (f), § 52.2376(a), § 52.2435(a), § 52.2481(b), § 52.2524(c), § 52.2578(d), § 52.2578(e), § 52.2625(a), § 52.2730(a).

§§ 52.828 and 52.2078 [Amended]

28. The following sections are amended by removing the reference to "§ 51.15b (1) and (2)" and replacing it with "§ 51.261 (a) and (b)": § 52.828(1)(i), § 52.2078(b)(1)(i).

29. The following sections are amended by removing the reference § 51.15(b)" and replacing it with "§ 51.261": § 52.240(b), § 52.828(b)(1)(iii), § 52.1577(b), § 52.1677(a).

30. The following sections are amended by removing the reference to "§ 51.15 (b) and (c)" and replacing it with "§ 51.261 and 51.262(a)": § 52.84(d)(10), § 52.255(g), § 52.256(i), § 52.524(b)(7), § 52.730(b)(4),

§ 52.927(b)(6), § 52.1175(d)(4), § 52.1975(c)(12), § 52.2078(b)(iii), § 52.2223(e)(18), § 52.2285(g), § 52.2438(g), § 52.2439(i), § 52.2524(b)(10), § 52.2578(c)(4).

31. The following sections are amended by removing the reference to "§ 51.15(c)" and replacing it with "§ 51.262(a)": § 52.84(a), § 52.240(a), § 52.524(a), § 52.677(a), § 52.730(a), § 52.778(a), § 52.927(a), § 52.1080(a), § 52.1175(c), § 52.1524(b), § 52.1577(c), § 52.1626(a), § 52.1677(b), (c), § 52.1975(a), § 52.2077(a), § 52.2223(b), § 52.2481(a), § 52.2524(a), § 52.2578(b).

§ 52.274 [Amended]

32. The following sections are amended by removing the reference to "§ 51.16" and replacing it with "Subpart H": § 52.274(a), (b), (e), (h), (g).

§ 52.2227 [Amended]

33. The following section is amended by removing the reference to "§ 51.16(b)(3)" and replacing it with "§ 51.152(a)": § 52.2227.

34. The following sections are amended by removing the reference "§ 51.18" and replacing it with "Subpart I": § 52.10, § 52.21(b)(2)(iii)(*e*)(*1*), (b).(2)(iii)(*f*), (b).(17), § 52.24(f)(5)(iii)(*e*)(*1*), (f)(5)(iii)(*e*)(*2*), (f)(5)(iii)(*f*), (f)(6)(iii), (f)(6)(v)(*c*), (f)(12), § 52.78(a), § 52.129(e), § 52.232(a)(1)(i), (a)(5)(i)(A), § 52.426(a), § 52.574(a), § 52.629(a), § 52.780(e), § 52.878(a), § 52.1124(a), § 52.1225(a), § 52.1276(a), § 52.1328(a), § 52.1578(a), § 52.1824(a), § 52.2125(a), § 52.2228(a), § 52.2579(a), § 52.2623(a), § 52.2724(a), § 52.2824(a).

§§ 52.233 and 52.780 [Amended]

35. The following sections are amended by removing the reference to "§ 51.18(a)" and replacing it with "§ 51.160(a)": § 52.233(c), § 52.780(a).

§§ 52.129 and 52.233 [Amended]

36. The following sections are amended by removing the reference to "§ 51.18(c)" and replacing it with "§ 51.160(a)": § 52.129(b), § 52.233(c)(d).

§§ 52.1124 and 52.1879 [Amended]

37. The following sections are amended by removing the reference to "§ 51.18(h)" and replacing it with "§ 51.161": § 52.1124(c), § 52.1879(c).

§§ 52.24 and 52.688 [Amended]

38. The following sections are amended by removing the reference to "§ 51.18(j)" and replacing it with § 51.165(a)":, § 52.24(j)(2), § 52.688(b)(2).

39. The following sections are amended by removing the reference to "§ 51.19(a)" and replacing it with "§ 51.211": § 52.130(a), § 52.234(a), § 52.1479(a), § 52.2075(a).

40. The following sections are amended by removing the references to "§ 51.19(b)," and "§ 51.19(c) and replacing them with "§ 51.212": § 52.234(b), (c), § 52.794(a), (b), § 52.1077(a), § 52.2030(b), (c).

41. The following sections are amended by removing the reference to "§ 51.19(d)" and replacing it with "§ 51.213": § 52.130(b), § 52.479(b), § 52.2298(b), § 52.2427(c), § 52.2477(a).

42. The following sections are amended by removing the reference to "§ 51.19(e)" and replacing it with "§ 51.214": § 52.130 (d), (e), § 52.234(e), § 52.796(a), § 52.1479(b), § 52.1680(a), § 52.2684(a).

43. The following sections are amended by removing the reference to "§ 51.20" and replacing it with "§ 51.280": § 52.135(a), § 52.175(a), § 52.978(a), § 52.2031(a), (b), § 52.2483(a).

44. The following sections are amended by removing the reference to "§ 51.21," and replacing it with "Subpart M": § 52.80(a), § 52.1579(a), § 52.2032 (a), (b), § 52.2433(a).

45. The following sections are amended by removing the references to "§ 51.22," and "51.22(b)" and replacing it with "§ 51.281": § 52.125 (a)(1), (b), § 52.126 (a), (c), § 52.133(c), § 52.272(a), § 52.795(b), § 52.988(a), § 52.1082 (a), (b), § 52.1635(a), § 52.2436 (a), (b).

§§ 52.21 and 52.24 [Amended]

46. The following sections are amended by removing the reference to "§ 51.24" and replacing it with "§ 51.166": § 52.21 (b)(2)(iii)(*e*)(*1*), (b)(2)(iii)(*e*)(*2*), (b)(2)(iii)(*f*), (b)(17), (f)(3), § 52.24 (f)(5)(iii)(*e*)(*1*), (f)(5)(iii)(*f*), (f)(12).

§§ 52.1331 and 52.2428 [Amended]

47. The following sections are amended by removing the reference to "§ 51.30" and replacing it with "§ 51.340": § 52.1331(a), § 52.2428 (a), (b).

§ 52.782 [Amended]

48. The following section is amended by removing the reference to "§ 51.31(c)" and replacing it with "§ 51.341": § 52.782(a).

49. The following sections are amended by removing the reference to Appendix N and replacing it with "Subpart G": § 52.88(a)(5), § 52.89(a)(4), § 52.90(a)(3), § 52.91(a)(3), § 52.786(a)(3), § 52.1878(a)(2), § 52.2038(a)(4), § 52.2039(a)(3), § 52.2337(a)(3), § 52.2485(a)(4), § 52.2491(a)(3).

§ 52.235 [Removed]

50. The following section is removed: § 52.235.

§ 52.230 [Amended]

51. Section 52.230(a) is amended by revising the first portion to read as follows: "The requirements of § 52.14(c)(3) of this chapter as of September 22, 1972 (47 *FR* 1983), are not met since the . . . ."

§ 52.828 [Amended]

52. Section 52.828(b)(1)(iii) is amended by placing a period after "and (c)" and by removing "and, if applicable, § 51.32 (a) through (e) of this chapter."

§ 52.876 [Amended]

53. Section 52.876(a) is amended by revising the first portion to read as follows: "The requirements of § 51.260 and of § 51.15(a)(2) of this chapter as of September 19, 1976 (40 *FR* 43216), are not met since the . . . ."

§ 52.1576 [Amended]

54. Section 52.1576(a) is amended by revising the first portion to read as follows: "The requirements of § 52.14(c)(3) of this chapter as of May 8, 1974 (39 *FR* 16346), are not met since the . . . ."

§ 52.1676 [Amended]

55. Section 52.1676(a) is amended by revising the first portion to read as follows: "The requirements of § 52.14(c)(3) of this chapter as of May 8, 1974 (39 *FR* 16347), are not met since the . . . ."

§ 52.2078 [Amended]

56. Section 52.2078(b)(1)(iii) is amended by placing a period after "and (c)" and by removing "and, if applicable, § 51.32 (a) through (e) of this chapter."

§ 52.2682 [Amended]

57. Section 52.2682(a) is amended by revising the first portion to read as follows: "The requirements of § 52.17(a)(2) of this chapter as of December 19, 1978 (43 *FR* 59067), are not met since the . . . ."

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November 7, 1986

Part IV

Information Security Oversight Office

32 CFR Part 2003

National Security Information; Standard Forms; Final Rule

INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Part 2003

National Security Information; Standard Forms

AGENCY: Information Security Oversight Office (ISOO).

ACTION: Final rule.

SUMMARY: This amendment to 32 CFR Part 2003 provides for the use of an alternative Classified Information Nondisclosure Agreement to be executed by non-Government personnel as a condition of access to classified information. It also updates other provisions on the use of the nondisclosure agreements.

EFFECTIVE DATE: November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, ISOO. Telephone: (202) 535-7251.

SUPPLEMENTARY INFORMATION: This amendment to 32 CFR Part 2003 is issued pursuant to section 5.2(b)(7) of Executive Order 12356. ISOO has coordinated this amendment with those agencies that will be primarily affected by it.

List of Subjects in 32 CFR Part 2003

Classified information, Executive orders, Information, National security information, Security information.

32 CFR Part 2003 is amended as follows:

PART 2003—NATIONAL SECURITY INFORMATION—STANDARD FORMS

1. The authority citation for 32 CFR Part 2003 continues to read:

Authority: Sec. 5.2(b)(7) of E.O. 12356.

Subpart A—General Provisions

2. Section 2003.3 is revised to read as follows:

§ 2003.3 Waivers.

Except as specifically provided, waivers from the mandatory use of the standard forms prescribed in Subpart B may be granted only by the Director of ISOO. The Director of ISOO will be responsible for ensuring that all waivers that necessitate changes to a standard form are cleared with the General Services Administration's Information Resources Management Service (41 CFR 201-45.5).

Subpart B—Prescribed Forms

3. Section 2003.20 is revised to read as follows:

§ 2003.20 Classified Information Nondisclosure Agreement: SF 189; Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government): SF 189-A.

(a) SF 189 and SF 189-A are nondisclosure agreements between the United States and an individual. An individual is to execute either the SF 189 or the SF 189-A, as appropriate, before the United States Government may authorize that individual access to classified information.

(b) All employees of executive branch departments, and independent agencies or offices must sign SF 189 before being authorized access to classified information.

(c) All Government contractor, licensee, and grantee employees, or other non-Government personnel requiring access to classified information in the performance of their duties, must sign either SF 189 or SF 189-A before being authorized access to classified information.

(d) Agencies may require other persons, who are not included under paragraph (b) or (c) of this section, to execute SF 189 or SF 189-A before receiving access to classified information.

(e) Only the National Security Council may grant a waiver from the use of SF 189 or SF 189-A. To apply for a waiver, an agency must submit its proposed alternative nondisclosure agreement to the Director of ISOO, along with a justification for its use. The Director of ISOO will request a determination about the alternative agreement's enforceability from the Department of Justice prior to making a recommendation to the National Security Council. An agency that has received a waiver from the use of SF 189 need not seek a waiver from the use of SF 189-A, if the employees of its contractors, licensees and grantees, and other non-Government personnel are required to sign a nondisclosure agreement identical or comparable to the agreement for which a waiver has been granted. (Also see 32 CFR 2003.3 and 41 CFR 201-45.5.)

(f) Each agency must retain its executed copies of SF 189 and SF 189-A in file systems from which the agreements can be expeditiously retrieved in the event that the United States must seek their enforcement. The copies or legally enforceable facsimiles of them must be retained for 50 years following their date of execution. An agency may permit its contractors, licensees and grantees to retain the executed agreements of their employees during the time of employment. Upon the termination of employment, the contractor, licensee or grantee shall deliver the SF 189 or SF 189-A of that employee to the Government agency primarily responsible for his or her classified work.

(g) An authorized representative of a contractor, licensee, grantee, or other non-Government organization, acting on behalf of the United States, may witness the execution of SF 189 or SF 189-A by another non-Government employee, provided that an authorized United States Government official subsequently accepts by signature the SF 189 or SF 189-A on behalf of the United States. Also, an employee of a United States agency may witness the execution of the SF 189 or SF 189-A by an employee, contractor, licensee or grantee of another United States agency, provided that an authorized United States Government official subsequently accepts by signature the SF 189 or SF 189-A on behalf of the United States.

(h) The national stock number for the SF 189 is 7540-01 161-1869. The national stock number for the SF 189-A is 7540-01-237-2597.

Dated: November 4, 1986.

Steven Garfinkel,

Director, Information, Security Oversight Office

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