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Dated: March 29, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: April 5, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 89-2A]

Assessment of Interest Regarding the Cable Compulsory License

AGENCY: Copyright Office, Library of
Congress.

ACTION: Final regulation.

SUMMARY: On May 10, 1988 the Copyright Office published a Notice of Inquiry in the *Federal Register* requesting public comment as to whether interest should be assessed on underpaid royalty sums due under the cable compulsory license of the Copyright Act. After examining the comments received and analyzing the matter, the Copyright Office issues this final regulation imposing an interest charge on underpaid royalties. The regulation shall take practical effect at the end of the 1989-1 accounting period and apply only to underpayments (including zero payments) occurring on or after July 1, 1989.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Dorothy Schrader, General Counsel,
Copyright Office, Library of Congress,
Department 17, Washington DC, 20540.
Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

On May 10, 1988, the Copyright Office published in the *Federal Register* a Notice of Inquiry (NOI) seeking public

comment as to whether or not the Office should assess interest on underpaid royalty sums due in the wake of the District of Columbia Court of Appeals' decision in *Cablevision Systems Development Corp. v. Motion Picture Association of America*, 836 F.2d 599 (D.C. Cir.), cert. denied, — U.S. — (1988). 53 FR 16567 (1988). The NOI posed four questions: (1) Is a rule retroactively assessing interest legally permissible; (2) how should the interest rate, if adopted, be determined; (3) is it necessary for the Copyright Office to pay interest on refunds if it imposes interest on underpaid royalties; and (4) if interest is imposed, should it accrue from the last filing day of the accounting period in which underpayment occurred, or from some other date.

Comments received addressing these questions polarized between those interests representing cable systems and those interests representing copyright owners. Cable systems primarily attacked the Copyright Office's authority to adopt an interest rule. They argued that the Copyright Act and the legislative history are completely silent as to the issue of interest on late or underpaid royalties, and therefore there is nothing for the Copyright Office to interpret as part of its rulemaking power. Case law wherein other government agencies were allowed to assess interest is not applicable because the agencies involved in those cases have adjudicatory and enforcement powers which the Copyright Office does not possess. Furthermore, those cases did not involve copyright disputes and involved parties adjudicated to be wrongdoers. Cable systems are not wrongdoers, they contended, but instead the systems legitimately withheld sums based upon what they believed to be a good faith interpretation of the term "gross receipts" appearing in Section 111 of the Copyright Act and backed for a time by the district court decision in the *Cablevision* litigation.

Cable systems in their comments also argued that sections 701, 702 and 111(d)(1) do not provide the requisite authority for assessing interest. Regarding sections 701 and 702, it is noted that the Copyright Office has never espoused a wide grant of authority under the Copyright Act and has in fact confined itself to interpreting only the express terms of the statute. There is no language in the Act concerning interest on unpaid royalties, and therefore nothing for the Office to interpret. Assessing interest falls within the realm of substantive lawmaking, which is clearly not contemplated by the Act. While the Office may admittedly "administer" the compulsory license, as

described and allowed by the Court of Appeals in *Cablevision*, it cannot impose terms or conditions on the compulsory license not provided for in the statute. Finally, with regard to Section 111(d)(1), cable systems argued that the provisions contained therein are no more than ministerial. They allow the Register to prescribe forms and procedures for royalty deposits, but do not grant authority to control the amounts of the deposits, a function which is solely the province of the Copyright Royalty Tribunal.

Addressing the question of retroactivity posed by the NOI, cable systems submitted that if the Copyright Office does find that it has authority to impose a rule of interest for the cable compulsory license, that it impose the rule prospectively only. It is argued that a retroactive application of an interest rule, designed primarily to collect interest on underpayments made as a result of the early stages of the *Cablevision* litigation, would be unjust, unfair, and impermissible according to judicially developed tests for retroactive application of newly created laws.

Specifically, the cable systems contend that application of the five factor test announced in *Retail, Wholesale and Department Store Union v. NLRB*, 466 F.2d 380 (D.C. Cir. 1972) precludes retroactive application of an interest rule. The test requires a determination as to whether (1) the particular case is one of first impression, (2) the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law, (3) the extent to which the party against whom the new rule is applied relied on the former rule, (4) the degree of the burden which a retroactive rule imposes on a party, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard.

Cable systems argue that an interest rule for the compulsory license is clearly a case of first impression since the Copyright Office has never before asked for interest. Second, assessing interest is an abrupt departure from previous Office practice since, once again, the Office has never before requested that interest be paid on late or amended filings under the compulsory license. Third, cable systems relied on the fact that the Office did not assess interest, and imposition of an interest charge on sums due from previous accounting periods would take them by complete surprise. Fourth, retroactive imposition of interest is a considerable burden because it results in an immense and unexpected cost which cable systems

could not have prepared for because the Copyright Office had never before charged interest on underpaid royalties. Finally, the statutory interest in collecting interest payments does not outweigh the burdens thrust upon cable systems due to their justifiable reliance on the Office's prior practice of not charging interest. Cable systems are already obliged to pay copyright owners large sums of money in light of the Court of Appeals decision in *Cablevision*, and therefore copyright owners are being substantially compensated, satisfying significant statutory interests under the compulsory license. With the statutory goals of the compulsory license virtually achieved, the added benefit of an interest charge does not outweigh the significant and substantial hardship that it will cause to cable systems. With these five factors so analyzed and considered, *Retail, Wholesale and Department Store Union v. NLRB* forbids retroactive application of an interest rule.

As to the remaining questions posed by the NOI—those concerning the accrual date, rate, and whether the Office should pay interest on refunds—cable systems offered virtually no commentary. Only the National Cable Television Association commented that if an interest rule is adopted, it should also apply to refunds made by the Office because "equity" requires such payments.

Comments from parties representing copyright owners favored imposition of interest on underpaid royalties and argued that application of an interest rule to prior accounting periods is permissible. Copyright owners had little problem in finding that the Copyright Office has authority to adopt an interest rule for the compulsory license. Although the provisions of the compulsory license are silent as to interest on underpaid royalties, numerous judicial decisions have approved an agency's imposition of interest on overdue sums of money even where the statute creating the monetary obligation is silent as to interest. See, e.g., *City of Chicago v. Department of Labor*, 753 F.2d 606 (7th Cir. 1985); *EEOC v. County of Erie*, 751 F.2d 79 (2d Cir. 1984); *Myron v. Chicoine*, 678 F.2d 727 (7th Cir. 1982); *Mitchell v. Reigel Textile, Inc.*, 259 F.2d 954 (D.C. Cir. 1958); *United States v. Philmac Mfg. Co.*, 192 F.2d 517 (3d Cir. 1951). And in *United States v. United Drill and Tool Corp.*, 182 F.2d 998, 999 (D.C. Cir. 1950), the court held that "statutory obligation[s] in the nature of a debt bear interest even though the statute creating the obligation fails to provide for it."

Copyright owners also argued that it did not matter whether the monetary obligation is due the United States or is only collected by the Government for later disbursement to third parties. Compare, *United States v. Goodman*, 572 F. Supp. 1284 (Ct. of Int'l Trade 1983) (customs duty due the United States) with, *Isis Plumbing and Heating Co.*, 138 NLRB 716 (1962), *rev'd on other grounds sub. nom. NLRB v. Isis Plumbing and Heating Co.*, 322 F.2d 913 (9th Cir. 1963) (employers having obligations to compensate former employees remit monies to the Government for later disbursement to the employees).

Aside from judicial authority, copyright owners focused on the broad grants of administrative authority found within the Copyright Act itself. Citing the Court of Appeals decision in *Cablevision*, they argued that the Register is in essence the superintendent of the cable television copyright field, the "administrative overseer," and therefore the rulemaking power of sections 702 and 111(d)(1) of the Copyright Act extend to the interest issue. Without interest, copyright owners are deprived of money rightfully theirs and are not fully compensated as Congress intended when it created the compulsory license. That Congress intended copyright owners receive interest on the royalty fund is supported by the language of section 111(d)(2) which provides that collected royalties "shall be invested in interest bearing United States securities for later distribution with interest * * *." (emphasis added). Thus, to fulfill the purpose and goal of the Statute, the Copyright Office is obliged to impose an interest rule.

Copyright owners also argued that an application of an interest rule to prior accounting periods would not raise retroactivity concerns. Like cable systems, their arguments are premised on equitable considerations. Applying the five part test of *Resale, Wholesale and Department Store Union v. NLRB* permits retroactive application of interest, and equity virtually requires it, copyright owners contend. Acknowledging that this is a case of first impression, copyright owners criticize the cable systems' position that they justifiably relied upon the Copyright Office's practice of not assessing interest on royalty underpayments.

Specifically, although the Copyright Office has not previously requested interest on late and amended filings, neither has the Office declared that interest on underpaid royalties is not required to obtain the compulsory license. Rather, the Copyright Office has

had no policy or rule regarding interest at all. Thus, under the second and third factors of *Retail, Wholesale*, there has been no departure from a previous rule, nor could there have been justifiable reliance by cable systems. Under the fourth factor, which looks to the degree of burden shouldered by a party against whom a retroactive rule is applied, copyright owners argue that cable systems' claims of unforeseeable financial costs are disingenuous. When cable systems disputed the Copyright Office's interpretation of gross receipts under the compulsory license, they certainly must have realized, or should have realized, that if their position were not vindicated they would have to pay the sums withheld, plus interest to compensate copyright owners for their wrongful withholding. Equitably, what cable systems should have done was to either place their withheld sums in escrow or pay them into the royalty pool for later refund (so as to generate interest on those funds). Instead, cable systems intentionally withheld the sums and benefitted from the use of those monies. Given these considerations and cable systems' opportunity to avoid what they now claim will be substantial financial burdens in paying interest, they cannot be heard to claim that the burden is unexpected and unjust. Finally, the statutory interest in applying an interest rule retroactively outweighs claims of reliance or extreme financial burden. Allowing cable systems to withhold interest would not only be contrary to the statutory plan of full and complete compensation of copyright owners, but would encourage further underpayments in the future.

Copyright owners also directed their comments to the other questions posed by the NOI. On the issue of the time period from which interest should begin to accrue, copyright owners were in unanimous agreement that interest should accrue from the last filing day of the applicable accounting period. On the issue of interest payments for refunds made to cable systems, those few commentators who did address the question stated that the law was not symmetrical when the United States Government is involved and that the Government is not required to pay interest when the statute creating the payment obligation is silent on the issue.

There was some debate amongst copyright owners as to the applicable interest rate that should be adopted. Some commentators advocated adoption of the interest rate for late payments found at section 6621 of the Internal Revenue Code, while others suggested an average of the interest rate

paid on royalty funds deposited in the U.S. Treasury (since royalties are deposited in Treasury accounts as they are received by the Copyright Office and not all at once) based on a weighted capital costing approach. Finally, several commentators recommended adoption of the interest rate applicable to the funds deposited in the Treasury by the Copyright Office immediately following the close of the accounting period.

2. Policy Decision of the Copyright Office

The Copyright Office has carefully examined the comments and reply comments submitted by the interested parties, and has decided to issue an interest regulation for the cable compulsory license. The Office concludes that it does have the authority to adopt an interest regulation but, on the grounds of equitable considerations, and in the absence of a court decision with respect to a specific underpayment, will apply the regulation only prospectively, beginning July 1, 1989, and not to underpayments occurring before that date. Interest will begin to accrue from the first day after the last filing date of the applicable accounting period in which an underpayment is made. The interest rate shall be the rate applicable to the funds invested by the Copyright Office with the U.S. Treasury on the first business day after the last filing date of the relevant accounting period. The Copyright Office will not, however, include interest with refunds made to cable systems pursuant to its regulation on refunds.

As the Copyright Office indicated in the NOI, there exists sufficient authority to support the Office's adoption of an interest rule. Although the Copyright Act is silent on the question of interest in the context of underpayments, the Office believes its general rulemaking authority, when read in the light of the *Cablevision* decision, provides the necessary authority for the Office to consider and adopt an interest rule for the compulsory license. 17 U.S.C. 702 provides that "The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title." It is apparent that the operation of the compulsory license and the collection of royalty funds is part of the functions and duties of the Register. And, as recognized by the Court of Appeals in *Cablevision*, "Congress saw a need for continuing interpretation of section 111 and thereby gave the Copyright Office statutory authority to fill that role." *Cablevision*

Systems Development Corp. v. Motion Picture Association of America, 836 F.2d 599, 610 (D.C. Cir.), cert. denied, _____ U.S. _____ (1988).

The goal of the compulsory license is to guarantee that copyright owners receive full compensation for their works within the statutory scheme of the license, while at the same time allowing public access to the broadcast signals, if the terms of the compulsory license are satisfied. When royalty payments are not made on time in accordance with the terms of the license, the goal of full compensation is frustrated and copyright owners suffer from the present value loss of funds. The Copyright Office therefore concludes that it is consistent with the intention of Congress and the courts to impose a rule requiring interest payments on underpaid royalties pursuant to the cable compulsory license.

The issue which has particularly concerned the Copyright Office is the question of a retroactive application of an interest regulation. Copyright owners made clear in their comments that their immediate and specific concern in seeing an interest rule adopted was to cover underpayments which were made before the Court of Appeals decision in *Cablevision* upheld the validity of the Copyright Office's definition of "gross receipts." After reviewing the comments of both cable systems and copyright owners, the Copyright Office is persuaded that the five part retroactivity test announced in *Retail, Wholesale and Department Store Union v. NLRB*, 468 F.2d 380 (D.C. Cir. 1972) is applicable to this proceeding.

In applying the *Retail Wholesale* test to the present case, the Copyright Office acknowledges that interest assessment on underpaid royalties is a situation of first impression. The Office has never before formally addressed the issue of interest on underpaid royalties, or the issue of interest in any context where the Copyright Office collects or disburses monies. Although the Office has never before addressed interest, it has, in a sense, by default had a policy of not assessing interest on underpaid royalties since there is currently no policy of assessment. Copyright owners argued that this policy of not assessing interest was not really a conscious policy at all, but was merely the result of never having considered the issue. Cable systems, however, argued that the fact the Office never before required or requested interest on underpaid royalties speaks for itself, and to now adopt an interest rule represents an abrupt departure from the Office's

former policy.¹ The Copyright Office agrees that today's ruling does represent a departure from its previous practice, and therefore the Office must assess the impact of such a change upon cable systems making amended and/or late payments.

The final three factors of the *Retail, Wholesale* test examine the extent to which the party against whom the new rule is imposed relied on the former rule, the burden the new rule will cause that party, and whether the statutory interest in imposing the new rule retroactively outweighs the equities of that party's reliance on the old rule. The Copyright Office acknowledges cable systems' claims that they relied on the Office's policy of not assessing interest while *Cablevision* was being litigated, and notes that the circumstances of the litigation produced an added element of reliance. When the district court issued its opinion overturning the Copyright Office's gross receipts regulation, many cable systems adjusted their royalty payments downward in reliance on that decision. Given that the district court decision was the law for a certain period, reliance on that decision (and the subsequent royalty underpayments) was reasonable, although the Office cautioned cable systems repeatedly that it expected the regulation to be reinstated by the Court of Appeals. It is possible, if not probable, that cable systems might have acted differently had they known that, in the event the district court decision was reversed, the Copyright Office would assess interest on their underpayments. The equities are nearly equal, but the Office concludes that imposition of the interest rule to prior accounting periods would be unfair since cable systems relied on the *Cablevision* district court opinion.

The Copyright Office also acknowledges that retroactive assessment of the interest regulation would cause a substantial and unanticipated financial burden. For the above stated reasons, cable systems might have been able to insulate themselves from paying large sums in interest charges (by placing underpaid royalties in interest bearing accounts) had they been aware that the Copyright Office would someday adopt an interest rule and apply it retroactively. Neither can the Office find the statutory interest

¹ Cable systems also may have been misled by the position of the Copyright Royalty Tribunal, which declined to assess interest on payments withheld pending appeal of a ratemaking decision. Although the Tribunal has broad authority in the specific areas of ratemaking and royalty distribution, unlike the Copyright Office, it has no general grant of rulemaking authority.

for assessing interest retroactively to be so great as to outweigh the financial burdens. A prospective application of the interest regulation will serve as notice that cable systems should be prepared to pay interest if and when they underpay the proper cable royalty fee, for whatever reason. The Copyright Office concludes that, while it is a very close question, the equities on balance favor only a prospective application of the interest regulation adopted herein. The interest regulation adopted today shall become effective July 1, 1989, and affects any underpayments made on or after the date including underpayments and zero payments for royalties due for the 1989-1 accounting period.

The Office's decision to apply the regulation only prospectively should not be considered to have any implications for assessment of interest as part of a judgment of liability against a cable system in a court proceeding. Post-judgment assessment of interest is common, and the Office agrees that copyright owners should receive interest on any monies due under the cable compulsory license when they litigate and prevail against noncomplying cable systems.

Moreover, while the Office recognizes that copyright owners may elect not to sue merely for interest lost through past underpayments of cable royalties, if a copyright owner did sue, the Copyright Office would support the owner's right to collect interest based on a court judgement.

Our decision not to assess interest retroactively is related to our administrative authority and the comparative equities of a retroactive application of a rule. On balance, we conclude that our primary concern for fair administration of the cable compulsory license is better served by issuance of an interest regulation, assuring full compensation to copyright owners in the future. Cable system operators will be fully aware of the interest obligation, and this should serve as a disincentive to underpayments in the future.

3. Interest Rate

Regarding the applicable rate of interest that should be prescribed by the Office, the MPAA stated in its comments that the rate should be determined by "examining, mathematically, how cable royalty monies that were deposited timely have in fact grown since their deposit, by virtue of the interest they actually earned under 17 U.S.C. 111(d)(2), and to require that late payments be augmented to the same extent," or "if this calculation should prove unduly

burdensome" adopt the "interest rule for late payments found in the Internal Revenue Code, 26 U.S.C. 6621." Other copyright owner commentators suggested using a weighted capital costing approach to select an average rate of interest paid on royalty funds owner several accounting periods. These approaches, however, are for the most part geared toward developing interest rates for prior accounting periods. Since the Copyright Office will not be assessing interest on underpaid royalties from prior accounting periods, they are not applicable to this proceeding. The Office also does not feel that it should adopt the interest regulation of the Internal Revenue Code because that rule operates as a penalty for parties making late filings. The Copyright Office does not wish to penalize cable systems for late and amended filings, but rather wishes to compensate copyright owners for the present value loss of royalties which should have been deposited on a timely basis. Therefore, to achieve this equitable result, the Office chose a rate which would most closely approximate the interest earned on royalty payments made within the accounting period filing dates.

As part of its standard practice, the Copyright Office makes a deposit or royalty funds recently received with the U.S. Treasury on the first business day after the close of an accounting filing period. The interest rate paid on that deposit is readily obtainable from the U.S. Treasury within a day or so of the deposit. The Office feels that making the Treasury rate applicable to all underpayments which resulted from cable carriage during that accounting period, most closely equals the amount of interest the underpaid royalties would have earned had they been paid in accordance with the accounting period filing deadlines. The one drawback of adopting such an interest rate is that it is not a fixed predetermined rate. However, the Office concludes that this drawback is mitigated by the relative speed and certainty with which the Treasury interest rate is available to the Office and the public. Therefore, the interest rate applicable under the interest regulation adopted herein shall be the interest rate paid by the Treasury on the cable royalty funds deposited by the Copyright Office on the first business day after the close of the filing deadline for the accounting period with respect to which the underpayment occurs.

While the Copyright Office will be requiring interest on underpaid cable royalties, the Office has concluded that it will not pay interest on royalty

refunds made to cable systems. Copyright owner commentators argued that the law on interest is not symmetrical when the United States Government is involved, and cited several cases where interest was not allowed to run on claims against the Government. None of the cable system commentators addressed the issue of interest on refunds.

The Office has concluded that payment of interest on refunds made pursuant to 37 CFR 201.17(j) is administratively impracticable. The Office is reluctant to deduct monies from royalty pools to cover the administrative costs of paying interest on refunds, and it would be presented with difficult and costly procedures for determining the correct rate of interest to be paid. Furthermore, the Office notes that its current refund policy is not required by the compulsory license statute, and therefore it is not obliged now to include an interest charge with those payments. Moreover, since most refunds result from cable system error, the systems can avoid the problem by careful review of statements of account and quality controls before filing the statements. The Office concludes the copyright owners, which already bear the administrative costs of the refund procedure, should not be required to bear the costs of the interest assessment procedures as well.

Finally, the Copyright Office found unanimous agreement among copyright owner commentators regarding when interest on underpayments should begin to accrue. The interest regulation therefore states that interest begins to accrue starting on the first day after the close of the relevant accounting period filing deadline.

4. Implementation of the interest regulation

The interest rule adopted herein becomes effective July 1, 1989, and shall operate prospectively from thereon. Thus, any underpayment or zero payment of royalties pursuant to the cable compulsory license resulting from carriage of copyrighted programming on or after January 1, 1989, shall be subject to an interest assessment.

Cable systems submitting royalty payments in an untimely fashion must include the proper interest charge with their payment. Cable systems must perform their own interest charge calculations and may obtain the proper interest rate for the applicable accounting period(s) by contacting the Licensing Division, United States Copyright Office, 101 Independence Avenue SE., Washington, DC 20540,

Telephone: (202) 707-8150. In cases where interest is not paid or becomes due because of late receipt of a statement of account, the Copyright Office will notify the cable system of the interest obligation. The Office shall not require, nor notify a cable system of an interest charge when the interest due on a particular royalty sum paid by a cable system is less than or equal to five dollars (\$5.00).

Interest calculated in accordance with the Copyright Office's regulation shall be compounded annually. The accrual period for a particular royalty payment being submitted by a cable system in which interest is due shall end on the date appearing on the certified check, cashier's check, or money order submitted, provided that the payment is received by the Copyright Office within five business days of that date. If the payment is not received within five business days, then the accrual period shall end on the date of actual receipt by the Copyright Office.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (Title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.²

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Cable television, Cable compulsory license.

² The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17], except with respect to the making of copies of copyright deposits"). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

Final Regulation

In consideration of the foregoing, the Copyright Office is amending Part 201 of 37 CFR, Chapter II.

PART 201—[AMENDED]

1. The authority citation for Part 201 continues to read as follows:

Authority: Copyright Act of 1976, Pub. L. 94-553, 90 Stat. 2541 [17 U.S.C. 702].

§ 201.17 [Amended]

2. Section 201.17(i) is amended by inserting the designation "(1)" following the heading "Royalty fee payment" and before "The," and by adding a new paragraph (2) to read as follows:

(i) * * *

(2) Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments of royalties for the cable compulsory license occurring within that accounting period. The accrual period shall end on the date appearing on the certified check, cashier's check, or money order submitted by a cable system, provided that such payment is received by the Copyright Office within five business days of that date. If the payment is not received by the Copyright Office within five business days of its date, then the accrual period shall end on the date of actual receipt by the Copyright Office.

(i) The interest rate applicable to a specific accounting period shall be determined by reference to the interest rate paid by the United States Treasury on the first deposit of royalty fees made by the Copyright Office with the Treasury after the close of that accounting period. The interest rate paid by the Treasury for a particular accounting period may be obtained by contacting the Licensing Division of the Copyright Office.

(ii) Interest is not required to be paid on any royalty underpayment from a particular accounting period if the sum of that underpayment is less than or equal to five dollars (\$5.00).

Dated: March 23, 1989.

Ralph Oman,
Register of Copyrights.

Approved by:

James H. Billington,
The Librarian of Congress.
[FR Doc. 89-8462 Filed 4-7-89; 8:45 am]

BILLING CODE 1410-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3551-4]

Stack Height Negative Declarations; States of Arkansas, New Mexico, and Oklahoma

AGENCY: Environmental Protection Agency.

ACTION: Notice of GEP stack height negative declarations; States of Arkansas, New Mexico, and Oklahoma.

SUMMARY: The stack height demonstration analyses for Arkansas, Oklahoma and New Mexico with one exception as noted below, have been submitted to EPA. This Notice is to announce that these States have satisfied their obligations under section 406 of the Clean Air Act (CAA) to review their SIPs with respect to good engineering practice (GEP) stack height as defined in EPA's revised stack height regulations promulgated on July 8, 1985 (49 FR 44878).

No change in any SIP or applicable emission limit is required. The emission limitations for the sources addressed in this Notice need not be revised because (1) the sources were constructed before December 31, 1970 (grandfathered); or (2) they have stacks less than formula height; or (3) they have emission limitations unaffected by stack height.

Today's Notice does not include a stack height analysis for the Phelps Dodge smelter in Hidalgo County, New Mexico. The State of New Mexico and Phelps Dodge are engaged in a cooperative effort to complete a modeling evaluation for an air quality impact analysis of SO₂ emissions from the Hidalgo Smelter. A notice on the results of that review will be published at a later date.

Today's Notice also does not address the required review of dispersion techniques for existing sources with total allowable SO₂ emissions greater than 5000 tons per year. This portion of the review will be addressed at a later date after the promulgation of rules in response to the court's remand in *NRDC v. Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988).

EFFECTIVE DATE: This action will become effective on June 9, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Those interested persons wanting to examine these documents should make an appointment with the

appropriate office at least twenty-four hours before visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, Dallas, Texas 75202-2733.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72219.

New Mexico Environmental Improvement Division, 1190 St. Francis Drive, Harold Runnels Building, Santa Fe, New Mexico 87504-0968.

Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73152.

COMMENTS: Submit comments to Mr. Thomas Diggs, Chief (6T-AN), SIP/New Source, Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733 on or before May 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Winkler, Air Programs Branch, SIP/NSR Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, telephone (214) 655-7214 or (FTS) 255-7214. Reference Docket File Number.

Background

Section 123 of the CAA requires EPA to promulgate rules to assure that the degree of emission limitations required for the control of any air pollutant under an applicable SIP is not affected by stack heights exceeding good engineering practice (GEP) or by any other dispersion technique. On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the CAA. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F.2d 436 (D.C. Cir. 1983). On October 11, 1983, the court

issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. While the petition was pending before the Court, the mandate from the U.S. Court of Appeals was stayed.

On July 2, 1984, the Supreme Court denied the petition (104 U.S. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L. 95-95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing source specific emission limitations to determine whether any of these limitations have been affected by impermissible stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states are required to adopt and submit to EPA as SIP revisions the revised limitations. This notice addresses the second requirement, existing source review.

In October 1985, EPA issued detailed guidance on how to carry out the necessary existing source emission limitation reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65m in height and sources with emissions of sulfur dioxide (SO₂) in excess of 5,000 tons per year. (These limits correspond to the de minimis GEP

stack height and the de minimis SO₂ emission exemption from prohibited dispersion techniques.) These sources are then to be subjected to detailed review for conformance with the revised July 8, 1985 regulations (49 FR 44878). State submissions are to contain an evaluation of each stack and source in the inventory.

The States of Arkansas, New Mexico, and Oklahoma have performed the required reviews for GEP stack height and submitted them to EPA. A summary of the results follows.

Summary of the Analyses

A. Arkansas

The State of Arkansas submitted its analyses on September 12, 1986. Additional information was received from Arkansas dated March 14, 1988 and March 24, 1989. Within the State of Arkansas there are 31 stacks with heights greater than the de minimis height of 65 meters. Eleven of these stacks were in existence before December 31, 1970. Twenty stacks were reviewed for GEP formula height. None of the stacks has ever been physically raised. A description of the stacks and a summary of the State's conclusions based on a stack height review analysis for each stack are contained in Table 1.

Seventeen of the 20 stacks, which were reviewed for GEP formula height in accordance with the EPA regulations, were found to have actual stack heights at or below GEP height. Only three stacks were found to have actual stack heights greater than GEP height: (1) Arkansas Power and Light (AP & L) Independence, (2) AP & L White Bluff, and (3) Great Lakes West Plant incinerator. Air quality impact analyses for the National Ambient Air Quality Standards (NAAQS) and/or Prevention of Significant Deterioration (PSD) increments, as applicable, were performed for these three stacks at the GEP stack heights shown in Table 1. The air quality impact analyses were based on EPA's modeling guidelines (EPA-450/2-78-027R). No violations of any EPA standard at GEP stack height were predicted.

TABLE 1.—ARKANSAS

Company	Location	Stack ID	Grandfathered	GEP Stack Height (ft)
Georgia Pacific	Crossett	8R Recovery Furnace		241
		8R Smelt East		241
		8R Smelt West		241
SWEPCO	Gentry	Flint Creek Unit		540
Pottlatch Corporation	McGehee	Recovery Boiler		294
		Power Boiler		294
		Smelt Dissolver Vent		265

TABLE 1.—ARKANSAS—Continued

Company	Location	Stack ID	Grandfathered	GEP Stack Height (ft)
Arkansas Power and Light	Newark	Independence		983
	Redfield	White Bluff		983
	Helena	Ritchie Unit #1, Unit #2	X	
Agrico Chemical Company	Blytheville	Urea Plant		220
Arcadian Corporation	Helena	Rock Grinding	X	
International Paper Company	Camden	#1 Recovery Boiler (2 Stacks)	X	
		#2 & #3 Recovery Boilers	X	
Great Lakes West Plant	El Dorado	#1 Recovery Boiler Dissolving Tank Vent	X	
		Sulfur Plant Incinerator		213
Nekoosa Papers Inc.	Ashdown	#1 Power Boiler	X	
		#2 Power Boiler		235
		#2 Recovery Boiler		295
		#2 Smelt Dissolving Tank Vent (North)		295
		#2 Smelt Dissolving Tank Vent (south)		295
		#3 Recovery Boiler		325
		#3 Smelt Dissolving Tank Vent		325
		Bark Boiler		250
		#2 Recovery Boiler		250
		#3 Recovery Boiler		250
International Paper Company	Pine Bluff	#4 Recovery Boiler	X	
		#2 Dissolving Tank	X	
		#3 Dissolving Tank	X	
		#4 Dissolving Tank	X	

Arkansas has revised its new source review regulations to meet current EPA stack height regulations. The date of EPA's approval of the new source stack height SIP revision was February 23, 1989 (See 54 FR 7764).

B. New Mexico

The State of New Mexico submitted its analyses on January 6, 1986.

Additional information was received from New Mexico on the dates of March 3, June 23, June 25, and October 27, 1986. Within the State of New Mexico there are 12 stacks with heights greater than the de minimis height of 65 meters. Three of these stacks were in existence before December 31, 1970. Seven stacks were reviewed for GEP formula height. None of the stacks has ever been

physically raised. A description of the stacks and a summary of the State's conclusions based on a stack height review analysis for each stack are contained in Table 2. All seven of the stacks, which were reviewed for GEP formula height in accordance with the EPA regulations, were found to have actual stack heights at or below GEP height.

TABLE 2.—NEW MEXICO

Company	Location	Stack ID	Grandfathered	GEP stack height (FT)
Chino Mines	Grant County	Main Stack	X	
*Phelps Dodge	Hidalgo County	Main Stack		
Arizona Public Service	San Juan County	Lurgi Acid Plant Stack		
		Units 1 & 2	X	
		Unit 3	X	
		Unit 4		360
		Unit 5		360
Public Service Co. of NM	San Juan County	Unit 1		400
		Unit 2		400
		Unit 3		400
		Unit 4		400
Plains Electric	McKinley County	Main Boiler		450

*To be addressed in a separate notice.

There are two stacks at the Phelps Dodge Hidalgo Smelter. The actual height of the main stack at the Phelps Dodge Hidalgo Smelter exceeds the creditable height calculated using the GEP formula included in EPA's stack height regulations. Under these circumstances, a SIP emission limit evaluation is needed to ensure that applicable EPA air quality standards are not being violated when air quality impact is assessed based on GEP stack height. Due to complex terrain

considerations in the vicinity of the Hidalgo Smelter, a modeling evaluation is being performed. The State of New Mexico and Phelps Dodge are engaged in a cooperative effort to complete a modeling evaluation for an air quality impact analysis of SO₂ emissions from the Hidalgo Smelter. Therefore, New Mexico will be submitting its review for Phelps Dodge at a later date.

New Mexico has revised its new source review regulations to meet current EPA stack height regulations.

The date of EPA's approval was November 2, 1988 (See 53 FR 44191).

C. Oklahoma

The State of Oklahoma submitted its analyses on January 6, 1986. Additional information was received from Oklahoma on August 25, 1988. Within the State of Oklahoma there are 19 stacks with heights greater than the de minimis height of 65 meters. Two of these stacks were in existence before December 31, 1970. Seventeen stacks

were reviewed for GEP formula height. None of the stacks has ever been physically raised. A description of the stacks and a summary of the State's conclusions based on a stack height review analysis for each stack are contained in Table 3.

Fifteen of the 17 stacks, which were reviewed for GEP formula height in accordance with the EPA regulations, were found to have actual stack heights at or below GEP height. Only two stacks were found to have actual stack heights greater than GEP height. Both of these stacks are located at the Fort Howard Paper Company mill at Muskogee, Oklahoma and are designated as (1)

Boiler B-1, Boiler B-2 and (2) Boiler B-3, Boiler B-4.

Air quality impact analyses for the NAAQS and PSD increments, as applicable, were performed for the Fort Howard stacks at the GEP stack heights shown in Table 3. EPA reviewed these modeling analyses during its evaluation of an application for a PSD permit (PSD-OK-404) submitted by Fort Howard to EPA. As a result of EPA's review, it was concluded that Fort Howard would not cause or contribute to a violation of applicable PSD increments and NAAQS, and a PSD permit was issued to Fort Howard by EPA. The modeling techniques used in the demonstration supporting the Fort Howard analyses

were based on modeling guidance in place at the time that the analyses were performed, i.e., the EPA "Guideline on Air Quality Models: (1978)." Since that time, revisions to modeling guidance have been promulgated by EPA at 53 FR 592 (January 6, 1988). Because the modeling analysis was performed with the stacks at GEP stack heights and was underway prior to promulgation of the revised guidance, EPA accepts the analysis. The emission limitations would still not be affected by the stack height under any future modeling analysis. No violations of any EPA standard at GEP stack height were predicted.

TABLE 3.—OKLAHOMA

Company	Location	Stack ID	Grandfathered	GEP stack height (FT)
Western Farmers Electric Co-op	Choctaw County	Unit # 1		500
		Auxiliary boiler		215
Grand River Dam Authority	Mayes County	Unit # 1		505
		Auxiliary boiler		261
Oklahoma Gas & Electric Co	Noble County	Unit # 2		505
		Unit # 1		500
	Muskogee County	Unit # 2		500
		Unit # 4		350
		Unit # 5		350
		Unit # 6		500
Public Service Company	Seminole County	Unit # 3	X	
	Rogers County	Unit # 3/Unit # 4		600
	Tulsa County	Unit # 1		300
		Unit # 2		300
Weyerhaeuser Corp.	McCurain County	Main Stack	X	
		Smelt dissolving tank vent		217
		Wood waste boiler		250
Fort Howard Paper Co	Muskogee County	Boilers 1 & 2		213
		Boilers 3 & 4		213

Oklahoma has proposed a revision to its new source review regulations to meet current EPA stack height regulations. The date of EPA's proposed approval was December 21, 1987 (See 52 FR 48285).

Conclusion

The GEP stack height analyses have been submitted by Arkansas, New Mexico, and Oklahoma and are available for review at the locations listed previously. With the exception of Phelps Dodge, all potentially affected sources in the States of Arkansas, New Mexico, and Oklahoma having stack heights greater than 65 meters have been inventoried and analyzed. EPA's detailed review and approval of the technical support submitted by the States of Arkansas, New Mexico, and Oklahoma is contained in a technical evaluation report which summarizes the State's findings and EPA's review of each inventoried source. The report is available at the EPA Region 6 office in Dallas, Texas.

SIP emission limitations for these sources need not be revised because (1) they were constructed before December 31, 1970; or (2) they have stacks less than formula height; or (3) they have emission limitations unaffected by stack height.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit date by August 8, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

Date: March 30, 1989.

Robert E. Layton Jr.,

Regional Administrator.

[FR Doc. 89-8179 Filed 4-7-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3541-5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Fresno County and Placer County; Air Pollution Control Districts and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves revisions to the California State Implementation Plan (SIP). The California Air Resources Board submitted these revisions to EPA on

June 4, 1986 and August 12, 1986, for inclusion in the SIP. These revisions affect the Fresno County and Placer County Air Pollution Control Districts (APCDs), and the South Coast Air Quality Management District (AQMD). These revisions consist of administrative and noncontroversial rules. EPA is approving these revisions because they either strengthen the SIP or retain equivalent emission control requirements. They are consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy.

EFFECTIVE DATE: This action will be effective on June 9, 1989, unless notice is received within 30 days of publication that adverse or critical comments will be submitted.

ADDRESSES: Comments may be sent to: Regional Administrator, Environmental Protection Agency, Region 9, Attn: Air and Toxics Division, State Implementation Plan Section (A-2-3), 215 Fremont Street, San Francisco, CA 94105.

Copies of EPA's Technical Evaluation Reports and the submitted revisions are available for public inspection at the Region 9 office, during normal working hours. The submittals can also be viewed at the California Air Resources Board (ARB) at the appropriate District Office listed below.

California Air Resources Board,
Stationary Source Division, Criteria Pollutants Branch, Industrial Section,
1025 "P" Street, Room 210,
Sacramento, CA 95814

Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, CA 93775

Placer County Air Pollution Control District, 11484 "B" Avenue, DeWitt Center, Auburn, CA 95603

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen (A-2-3), State Implementation Plan Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, 415-974-7635; FTS: 454-7635.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1986 and August 12, 1986, the ARB officially submitted to EPA a set of revisions to the California SIP. This notice addresses the noncontroversial and administrative rules from these two SIP revision

submittals. The following list identifies the rules addressed by this notice.

Description of Rules

June 4, 1986 Submittal

Fresno County APCD

Rule 102 Definitions

Rule 111 Arrests and Notices to Appear

Rule 609 Episode Action Stage I (Health Advisory Alert)

Rule 613 Stationary Source Curtailment

Rule 613.1 Traffic Abatement Plan

Rule 613.2 Plan Submittal

Rule 613.3 Energy Conservation, Load Reduction, or Load Shedding Plans

Rule 613.4 Source Inspection Plans

Rule 614 Episode Abatement Plan

South Coast AQMD

Rule 209 Transfer and Voiding of Permits

August 12, 1986 Submittal

Placer County APCD

Mountain Counties Air Basin Portion

Rule 101 Title

Rule 201 Coverage

Rule 305 No Burn Days

EPA Evaluation

EPA has evaluated these rule revisions against the Clean Air Act, 40 CFR Part 51, and EPA policy. The EPA is approving these revisions because they are consistent with the previously approved regulations. The revisions are primarily administrative and either strengthen or retain the State Implementation Plan (SIP). The following revisions include minor changes to existing rules which are expected to result in an increased effectiveness and enforceability of those rules. Fresno County APCD Rules 102, and 111; Placer County APCD Rules 101, 201, and 305; and South Coast AQMD Rule 209 will either maintain or strengthen the existing SIP, therefore, EPA is approving them under section 110 of the Clean Air Act.

Fresno County Rules 609, 613, 613.1, 613.2, 613.3, 613.4, and 614 concern air pollution control contingency plans required by 40 CFR 51.152, "Contingency plans", under Subpart H, "Prevention of Air Pollution Emergency Episodes." The Fresno County rules listed above require control measures for stationary sources and traffic abatement plans during emergency episodes. The contingency plans are federally approvable once they are approved by the Air Pollution Control Officer. These rules are generally equivalent to the existing federal requirements and meet, in part, the requirements of § 51.152.

EPA Action

EPA's review of these new and revised rules finds them consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy. Therefore, EPA is taking final action to approve these rules under section 110 of the Clean Air Act.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment action and anticipates no adverse comments. This action will be effective June 9, 1989 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective June 9, 1989.

Regulatory Process

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Date: March 7, 1989.

Daniel W. McGovern,
Regional Administrator.

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

PART 52—[AMENDED]**Subpart F—California**

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.220 is amended by adding paragraphs (c) (169) and (170) to read as follows:

§ 52.220 Identification of Plan.

(c) * * *

(169) Revised regulations for the following APCD's were submitted on June 4, 1986, by the Governor's designee.

(i) Incorporation by reference.

(A) Fresno County Air Pollution Control District.

(1) Amended rules 102 (definitions B, C, D, F thru N, P, Q, R, S, T, U, W, Y, Z, AA, BB, CC, EE, FF, HH, II, JJ, LL, MM, and NN, only), 111, 609, 613 and 614, adopted October 22, 1985.

(2) New rules 613.1, 613.2, 613.3 and 613.4, adopted October 22, 1985.

(B) South Coast Air Quality Management District.

(1) Amended rule 209, adopted November 1, 1985.

(170) Revised regulations for the following APCD's were submitted on August 12, 1986, by the Governor's designee.

(i) Incorporation by reference.

(A) Placer County Air Pollution Control District.

(1) Amended rules 101, 201, 305 (Mountain Counties portion), adopted May 27, 1986.

[FR Doc. 89-6870 Filed 4-7-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL-3551-8]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Stanadyne, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Stanadyne, Incorporated in

Windsor, Connecticut. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was previously approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATES: This action will become effective on or before June 9, 1989, unless notice is received on or before May 10, 1989, within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On January 11, 1989, the State of Connecticut submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of State Order No. 8018 which the State of Connecticut issued to Stanadyne, Incorporated in Windsor, Connecticut. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on Stanadyne as required by subsection 22a-174-20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a-174-20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP

would be submitted to EPA as source-specific SIP revisions.

Summary of RACT Determination

Stanadyne operates 24 degreasing units, 15 rust prevention dip tanks, 5 solvent recovery stills, and various 1/2 gallon cans containing solvent which are used to dip clean small parts at workbenches. The control of solvent metal cleaning operations in Connecticut is covered under subsection 22a-174-20(l), "Metal cleaning," of Connecticut's regulations. Final approval of this regulation was granted by EPA on February 1, 1984 (49 FR 3988). Under subparagraph 22a-174-20(l)(2)(iii) of Connecticut's solvent metal cleaning regulation, however, open top vapor degreasers and conveyorized degreasers that were in operation prior to July 1, 1980, are exempt from meeting the control and operating requirements prescribed in subsection 22a-174-20(l). Some of Stanadyne's conveyorized vapor degreasers and open-top vapor degreasers were in operation prior to July 1, 1980, and thus were exempt from meeting RACT under subsection 22a-174-20(l). These units are now being required to meet RACT pursuant to subsection 22a-174-20(ee).

Stanadyne has converted the solvent used in 18 of its 24 degreasing units to solvents exempted by EPA from the definition of VOC because of their photochemical nonreactivity. As such, the State Order is not requiring any control requirements on these 18 degreasing units. Additionally, Stanadyne has converted 1 unit (the Niagra parts washer, a cold cleaner) to Mineral Seal Oil which has a very low volatility (approximately 0.008 mm Hg at 20 °C). Because of Mineral Seal Oil's extremely low volatility, the State Order is not requiring any control requirements on this degreasing unit.

The remaining 5 degreasing units at Stanadyne (1 conveyorized vapor degreaser, 2 open-top vapor degreasers, 1 ultrasonic vapor degreaser, and 1 cold dip tank) continue to use VOC solvents. As RACT, the Connecticut DEP requires these units to meet the requirements in subsection 22a-174-20(l) of Connecticut's regulations (Connecticut's solvent metal cleaning regulation) as well as other additional requirements contained in the State Order which increase the stringency of the control requirements imposed on these degreasing units.

In addition to its degreasing operations, the company utilizes 15 rust prevention dip tanks in thirteen separate departments to coat interim and finished products prior to the next machining

step or storage. The parts are coated with a blend of Mineral Spirits and a wax in solution. Twelve (12) of these tanks are five to fifteen gallon capacity tanks operated manually. One (1) additional manual tank has a capacity of fifty gallons. The 2 remaining tanks are automatic tanks each capable of holding 280 gallons of solvent/wax blend.

The following operational requirements apply to these 15 tanks. Stanadyne must cover the 12 five to fifteen gallon tanks and the 1 fifty gallon tank whenever they are not in use for longer than five minutes. Stanadyne must cover the 2 automatic tanks at the end of each production period and those tanks must remain covered until the next production period begins. The Connecticut DEP has accepted this RACT determination for these rust prevention dip tanks because of the low volatility of the Mineral Spirits utilized, 5 mm Hg at 100 °F. The company agrees not to convert to the use of a VOC with vapor pressure in excess of 5 mm Hg at 100 °F in any of the rust prevention dip tanks at any time in the future.

In addition, the Company operates 5 solvent recovery stills. Two (2) of the stills are centrally located and are used to recover the exempt solvents from a number of degreasing units. These 2 solvent recovery stills have previously been utilized to recover the VOC Freon TC-7. As of January 1, 1989, the Company has discontinued the use of Freon TC-7, and permanently replaced this solvent with an exempt solvent. Therefore, no operating requirements have been imposed on these stills. The Company agrees that at no time after January 1, 1989, will these solvent recovery stills be utilized to recover a VOC. The remaining 3 solvent recovery stills are located on the three perchloroethylene degreasing units. Stanadyne is required to cease operation of any solvent recovery still whenever the condensate return temperature exceeds 100.4 °F. This is the temperature above which the solvent recovery still is achieving less than the minimum required ninety-five percent solvent recovery rate. The condensate return temperature on each solvent recovery is required to be monitored with an alarm which will be triggered should the condensate return temperature exceed 100.4 °F. Furthermore, Stanadyne is required to store all waste VOC (before being recovered in the solvent recovery stills or before being sent out as a waste product) in closed containers which prevent the evaporation of VOC to the atmosphere.

Additionally, the State Order requires Stanadyne to maintain a recordkeeping system of all additions to each of the 5 degreasing units utilizing VOC and the rust prevention dip tanks. Further, Stanadyne is required to maintain a recordkeeping system of all waste VOC that is generated from the 5 VOC-utilizing degreasing units and the rust prevention dip tanks. With this information, Stanadyne is required to calculate the VOC emissions from its degreasing operations and dip tanks on a quarterly basis.

Stanadyne also uses ½ gallon cans to dip clean small parts at workbenches. The solvents previously used in these cans contained some VOC. Stanadyne has converted the solvent used in these cans to an exempt solvent. The State Order requires that this solvent be used at all times after January 1, 1989.

EPA has reviewed State Order No. 8018 and has determined that the level of control required by this Order represents RACT for Stanadyne.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on June 9, 1989.

Final Action

EPA is approving Connecticut State Order No. 8018 as a revision to the Connecticut SIP. The provisions of State Order No. 8018 define and impose RACT on Stanadyne to control VOC emissions as required by subsection 22a-174-20(ee) of Connecticut's regulations.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by [60 days from date of publication]. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

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

March 24, 1989.

Paul G. Keough,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

Subpart H—Connecticut

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.370 is amended by adding paragraph (c)(49) to read as follows:

§ 52.370 Identification of plan.

• • • • •
(c) • • •

(49) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on January 11, 1989.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated January 11, 1989, submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8010 and attached Compliance Timetable for Stanadyne, Incorporated in Windsor, Connecticut. State Order No. 8018 was effective on January 3, 1989.

(ii) Additional materials.

(A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the reasonably available control technology determination imposed on the facility.

[FR Doc. 89-8262 Filed 4-7-89; 8:45 am]

BILLING CODE 6560-50-M