§ 1.496 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of VA.

(a) *Application.* A court order authorizing the placement of an undercover agent or informant in a VA drug or alcohol abuse, HIV infection, or sickle cell anemia treatment program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the VA treatment program are engaged in criminal misconduct.

(b) *Notice.* The VA facility director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order), unless the application asserts a belief that:

(1) The VA facility director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The VA facility director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) *Criteria.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of a VA treatment program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the VA treatment program outweigh the potential injury to patients of the program, physician-patient relationships and the treatment services.

(d) *Content of order.* An order authorizing the placement of an undercover agent or informant in a VA treatment program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the VA treatment program; and

(4) Include any other measures which are appropriate to limit any potential disruption of the program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(e) *Limitation on use of information.* No information obtained by an undercover agent or informant placed under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under § 1.494 of this part.

(Authority: 38 U.S.C. 7334)

§ 1.497–1.499 [Reserved]

§ 1.513 [Amended]

3. In § 1.513(b)(2) remove the words ''Post Office Department'' and add in their place, ''U.S. Postal Service''.

§ 1.513a [Removed]

4. Section § 1.513a is removed.

[FR Doc. 95–30138 Filed 12–12–95; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 081–4012a; FRL–5326–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Stage II Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision supplements the approved Pennsylvania Stage II regulation by establishing and requiring appropriate testing and certification of Stage II vapor recovery equipment for affected sources in Pennsylvania. The intended effect of this action is to approve these requirements as a supplement to the Pennsylvania Stage II vapor recovery regulation, Chapter 129.82. Final approval of these supplemental provisions to the Stage II regulation will stop the sanctions clock that was started on June 13, 1994.

DATES: This action will become effective January 22, 1996 unless notice is received on or before January 12, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On October 26, 1995, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of sections 6.7(b), (c), (h) and section 17(2) of the Pennsylvania Air Pollution Control Act, as amended on June 29, 1992 and effective on July 9, 1992. These provisions are meant to supplement the existing Pennsylvania Stage II vapor recovery regulation, Chapter 129.82. EPA approved the Stage II regulations in a final limited approval/disapproval rulemaking notice on June 13, 1994 (59 FR 30302). These supplemental provisions correct the deficiencies identified in that rulemaking notice and the proposal, which was published on November 29, 1993 (58 FR 62560). The June 13, 1994 final limited approval/disapproval rulemaking started a sanctions clock that allowed Pennsylvania 18 months to submit material that would correct the deficiencies in the Stage II regulation. This 18 month period ends on January 14, 1996. Final approval of the Stage II regulations will stop this sanctions clock. The submittal of the supplemental provisions that correct the existing deficiency in the Pennsylvania Stage II regulation allows EPA to convert the limited approval/disapproval of the Pennsylvania Stage II regulation to a full approval; thereby halting the sanctions clock.

Summary of SIP Revision

Section 17(2) establishes the effective date of the Pennsylvania Stage II vapor recovery regulations as November 12, 1992. This effective date is consistent with the requirements of section 182 of

the Clean Air Act and the EPA Stage II guidance developed under that section. Sections 6.7(b) and (c) establish the effective date for affected sources based on their gasoline throughput or construction date. Section 6.7(h) establishes that the testing and certification required for all affected sources must be conducted in accordance with the Stage II guidance issued by EPA. EPA has determined that each of these provisions is consistent with the Clean Air Act and EPA's Stage II guidance.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 22, 1996 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 22, 1996.

Final Action

EPA is approving sections 6.7(b), (c), (h) and section 17(2) of the Pennsylvania Air Pollution Control Act, as amended on June 29, 1992, as these provisions correct the deficiencies in the Stage II requirements in Pennsylvania Chapter 129.82, which were approved in a limited fashion by EPA on June 13, 1994. An interim final determination published elsewhere in this Federal Register stops the sanctions clock that was started when the final limited approval/disapproval action was published on June 13, 1994 until EPA's full approval of the Pennsylvania Stage II regulation becomes effective.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.,* EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). SIP approval actions

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the approval of supplemental Stage II provisions in Pennsylvania, must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. 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

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

Dated: October 31, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraphs (c)(106) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(106) Revisions to the Pennsylvania Regulations, Chapter 129.82 pertaining to Stage II Vapor Recovery and the associated definition of gasoline dispensing facilities originally submitted on March 4, 1992 and supplemented on October 26, 1995 by the Pennsylvania Department of Environmental Protection (formerly known as the Department of Environmental Resources):

(i) Incorporation by reference.

(A) Letter of October 26, 1995 from the Pennsylvania Department of Environmental Protection transmitting sections 6.7 (b), (c), (h) and section 17(2) of the Pennsylvania Air Pollution Control Act as amended on June 29, 1992.

(B) Sections 6.7 (b), (c), (h), and section 17(2) of the Pennsylvania Air Pollution Control Act, amended June 29, 1992 and effective on July 9, 1992.

[FR Doc. 95–30109 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[PA 081–4012c; FRL–5343–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Interim Final Determination That Pennsylvania has Corrected the Deficiency in the Stage II Vapor Recovery Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's Federal Register, EPA has published a direct final rulemaking fully approving the Commonwealth of Pennsylvania's submittal of its Stage II Vapor Recovery requirements. The EPA has also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's proposed action, EPA will withdraw its direct final action and will consider any comments received before taking final action on the State's submittal. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiency for which a sanctions clock began on July 13, 1994. This action will defer the application of the offset sanction and defer the application of the highway sanction. Although this action is effective upon publication, EPA will take comment on this interim final determination as well as EPA's proposed approval of the State's submittal. If no comments are received on EPA's proposed approval of the State's submittal, the direct final action published in today's Federal Register will also finalize EPA's determination that the State has corrected the deficiency that started the sanctions clock. If comments are received on EPA's proposed approval and this interim final action, EPA will publish a final rule taking into consideration any comments received.

DATES: *Effective date.* December 13, 1995.

Comment date. Comments must be received by January 12, 1996.

ADDRESSES: Comments should be sent to Marcia L. Spink, Associate Director, Air Programs, (3AT00), Air, Radiation and Toxics Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19103. The state submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address and at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above of via e-mail at stahl.cynthia@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1992, the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, submitted a Stage II vapor recovery regulation, Chapter 129.82, which EPA disapproved in a limited fashion on June 13, 1994 (59 FR 30302). The EPA's disapproval action started an 18-month clock for the application of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act) and a 24-month clock for promulgation of a Federal implementation plan under section 110(c)(1) of the Act. The State subsequently submitted a revised program on October 27, 1995, correcting the deficiencies in the original submittal. The EPA has taken direct final action on this submittal pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of today's Federal Register, EPA has issued a direct final full approval of the Commonwealth of Pennsylvania's submittal of its Stage II vapor recovery regulation. In addition, in the Proposed Rules section of today's Federal Register, EPA has proposed full approval of the State's submittal.

II. EPA Action

Based on the proposed full approval set forth in today's Federal Register, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiency that started the sanction clock and, therefore, EPA is taking this interim final action finding that the State has corrected the disapproval deficiency, effective on publication. This action does not stop the sanction clock that started under section 179 for this area on July 13, 1994. However, this action will defer the application of the offset sanction and will defer the application of the highway sanction. See 59 FR 39832 (Aug. 4, 1994) to be codified at 40 CFR 52.31. If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanction clock and will permanently lift any applied, stayed or deferred sanctions.

Today EPA is also providing the public with an opportunity to comment on this interim final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will take further action to disapprove the State's submittal and to find that the State has not corrected the original disapproval deficiency. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiency has not been corrected. In addition, the sanctions consequences described in the sanctions rule will also apply. See 59 FR 39832.

III. Administrative Requirements

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] 5 U.S.C. 553(b)(B). The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through its proposed and direct final action, is indicating that it is more likely than not that the State has corrected the deficiency that started the sanctions clock. Therefore, it is not in the public interest to initially apply sanctions or to keep applied sanctions in place when the State has most likely done all that it can to correct the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.