Original amendment submission date	Date of final publication	Citation/description
*	*	*
February 6, 1998	September 16, 1998	ASCMRC 701.5; 761.5(d); 780.14(c); 780.18(b)(7), .25(a)(3)(i), .35(b); 785.15(b)-(c), .16(a), (c)(6), and (d), .17(d)(5); 815.15(k); 816.11(g), .21, .22, .23, .24, .25, .43(e), (f)(5), .44(c), .46, .48(b), .56, .74, .102, .103, .104-S, .105-S, .106, .107(a)-(b); Part 823; Part 826; 845.18(b) and .19(a).

[FR Doc. 98–24780 Filed 9–15–98; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS ND–032–FOR, Amendment No. XXII]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the North Dakota regulatory program (hereinafter referred to as the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and information explaining those North Dakota's proposed rules and statutes which comprise the amendment pertain to: the North Dakota Small Operator Assistance Program, and individual civil and criminal penalties within the coal exploration section of the program. The amendment is intended to revise the North Dakota program to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: September 16, 1998.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6550; Fax: (307) 261–6552; Internet: GPadgett@osm.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning the North Dakota program and program amendments can be found at 30 CFR 934.12, 934.13, 934,15, and 934.16.

II. Proposed Amendment

By letter dated April 12, 1995, North Dakota submitted a proposed amendment (amendment number XXII, administrative record No. ND–W–01) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment in response to the required program amendments at 30 CFR 934.16(y) and (z) (59 FR 37423, 37428–374296; July 22, 1994). The statutory provisions North Dakota proposed to revise are: North Dakota Century Code (NDCC) 38–14.1–37(4) concerning SOAP, reimbursement of costs, and NDCC 38–12.1–08, concerning coal exploration, individual civil and criminal penalties.

OSM announced receipt of the proposed amendment in the May 2, 1995, **Federal Register** (60 FR 21484; administrative record No. ND–W–04), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment. Because no one requested a public hearing or meeting, none was held. The public comment period ended at 4 p.m. on June 1, 1995.

During its review of the amendment, OSM identified concerns with the proposed revisions to NDCC 38–13.1–08, relating to individual civil and criminal penalties within the coal exploration program. OSM notified North Dakota of the concerns by letter dated August 28, 1995 (administrative record No. ND–W–12). North Dakota responded in a letter dated October 19, 1995 (administrative record No. ND–W–14) by submitting additional proposed revisions to its program at North Dakota Administrative Code 43–02–01 and additional explanatory information pertaining to North Dakota Century Code 38–12.1–08.

Based upon the revisions to and additional explanatory information that was submitted with the proposed program amendment submitted by North Dakota, OSM reopened the public comment period in the November 9, 1995, **Federal Register** (60 FR 56549; administrative record No. ND–W–16). The public comment period ended 4 p.m. November 24, 1995.

The regulatory revisions that North Dakota proposed in its October 19, 1995 letter, while satisfying most of OSM's concerns, made North Dakota's regulations at North Dakota Administrative Code (NDAC) 43–02–01 inconsistent with its statute at NDCC 38–12.1–08, upon which those regulations are based. However, when this was pointed out to North Dakota in a July 30, 1997 telephone conversation (administrative record No. ND–W–21), it submitted an August 1, 1997 letter (administrative record No. ND–W–18) slightly revising its regulations at NDAC 43–02–01 to make them consistent with its statute. Based on the proposed revision, OSM reopened the public comment period in the September 4, 1997, **Federal Register** (62 FR 46695; administrative record No. ND–W–19). The public comment period ended 4 p.m. September 19, 1997.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by North Dakota on April 12, 1995, and as revised and supplemented with additional explanatory information and program revisions on October 19, 1995, and on August 1, 1997, with additional requirements, is no less stringent than SMCRA and no less effective than the Federal regulations. Accordingly, the Director approves the proposed amendment.

1. NDCC 38–.1–37(4): Small Operators

North Dakota proposed a revision to NDCC 38–14.1–37(4), pursuant to the Director's Findings at III.3.i that were contained in the July 22, 1994 **Federal Register** (Vol. 59, No. 140, p. 37426). This addition of subsection 4 to NDCC 38–14.1–37 also affects subsections 2 and 3 in accordance with the July 22, 1994, **Federal Register** noted above. The Director's Findings at III.3.h. states that:

> [I]f North Dakota ultimately decides to adopt the responsibility to provide or assume the training costs and inform qualified coal operators of the availability of assistance under SOAP, NDCC 38–14.1–37(3), because

of its discretionary nature, will be less stringent than section 507(c)(2) of SMCRA. North Dakota will then be required to amend its program to mandate that the Commission ''shall'' provide or assume the costs of training and inform qualified coal operators of the availability of assistance under SOAP.

North Dakota has not yet decided whether to provide or assume the training costs and inform qualified coal operators under SOAP (August 25, 1998 telephone conversation, administrative record No. ND–W–24). As stated in the July 22, 1998 **Federal Register**, if North Dakota ultimately decides to adopt the responsibility to provide or assume the training costs and inform qualified coal operators of the availability of assistance under SOAP, NDCC–14.1–37(3), because of its discretionary nature, will be less stringent than section 507(c)(2) of SMCRA. North Dakota will then be required to amend its program to mandate that the Commission ''shall'' provide or assume the costs of training and inform qualified coal operators of the availability of assistance under SOAP. Based on the aforementioned, the Director finds that the proposed addition to North Dakota's statute, NDCC 38–14.1–37(4), is no less stringent than SMCRA.

2. NDCC 38–12.1–08 and 12.1–03–03: Coal Exploration, Statutory Provisions Regarding Individual Civil and Criminal Penalties

In previous reviews of the North Dakota program, OSM found deficiencies relating to the imposition of civil and/or criminal penalties on individual officers, agents, and directors of a corporation where the corporation committed a violation of the coal exploration program. A required amendment was consequently codified at 30 CFR 934.16(y) (57 FR 807, 827; January 9, 1992), and was subsequently modified (59 FR 37423, 37432; July 22, 1994). The modified required amendment, codified at 30 CFR 934.16(y), required North Dakota to amend NDCC 38–12.1–08 to specifically address the circumstances under which a corporate director, officer, or agent may be individually subject to civil or criminal penalties in connection with a violation committed by a corporate permittee. North Dakota was also required to submit proposed revisions in NDCC 38–12.1–08 to provide that (in addition to violations) failure or refusal to comply with the orders listed in section 518(f) of SMCRA and issued by the North Dakota Industrial Commission serve as an additional basis for the imposition of individual civil and criminal penalties upon corporate officers, directors, and agents.

North Dakota proposed in this amendment to add a new provision at NDCC 38–12.1–08(3) stating that:

Any corporation or any person who controls the activity of a corporation who violates this chapter or any permit condition or rule implementing this chapter [NDCC Chapter 38–12.1] is subject to a civil penalty not to exceed five thousand dollars per day of such violation.

In addition, North Dakota re-proposed the revisions to NDCC 38–12.1–08(1) and (2) that were not approved in the July 22, 1994, rulemaking. In its August 28, 1995, letter (administrative record No. ND–W–12) identifying concerns to this amendment, OSM found that the proposed new provision at NDCC 38–12.1–08(3) essentially repeated the provision of NDCC 38–12.1–08(1) and did not clarify that individuals (officers, directors, and agents of corporate permittees) may be subject to penalties where the corporation, as opposed to the individual, commits a violation. In its October 19, 1995, response (administrative record No. ND–W–14), North Dakota argued that State law a NDCC 12.1–03–03 (as well as NDCC 38–12.1–08(3), does subject directors, officers, and agents to civil and criminal penalties even though it is the corporation, not the individuals, that committed a violation.

A. Criminal Penalties

With regard to the criminal penalties, North Dakota also referred to the provisions of NDCC 12.1–03–03 in its October 19, 1995 letter. NDCC 12.1–03–03 provides:

12.1–03–03 Individual accountability for conduct on behalf of organizations

1. A person is legally accountable for any conduct he performs or causes to be performed in the name of the organization or in its behalf to the same extent as if the conduct were performed in his own name or on his behalf.

2. Except as otherwise expressly provided, whenever a duty to act is imposed upon an organization by a statute or regulation thereunder, any agent of the organization having primary responsibility for the subject matter of the duty is legally accountable for an omission to perform the required act to the same extent as if the duty were imposed directly upon himself.

The terms ''agent'' and ''organization,'' as used in NDCC 12.1–03–03(2), are defined at NDCC 12.1–03–04(1) as follows:

In this chapter: (a) ''Agent'' means any partner, director, officer, governor, manager, servant, employee, or other person authorized to act in behalf of an organization. (b) ''Organization'' means any legal entity, whether or not organized as a corporation, limited liability company, or unincorporated association, but does not include an entity organized as or by a governmental agency for the execution of a governmental program.

Since ''organization'' includes corporations, and ''agent'' includes officers and directors of corporations, NDCC 12.1–03–03(1) would, when a corporation commits a violation, subject the officers, directors, and agents of the corporation to the same criminal penalties as the corporation, provided the individuals had ''performed'' or ''caused to be performed'' the conduct. OSM finds no substantive differences between the NDCC 12.1–03–03(1) phrase ''performs or causes to be performed'' and the SMCRA 518(f) phrase ''authorized, ordered, or carried out'' identifying the applicable conduct.

NDCC 12.1–03–03(2) would subject the individuals to the same criminal penalties as the corporation in the case of a failure or refusal to act if the individual had ''primary responsibility'' for that duty. North Dakota pointed out in its October 19, 1995, letter that NDCC 38.12–1–04(3) authorizes the Industrial Commission of North Dakota to promulgate and enforce orders, and that a failure or refusal to comply with all types of such orders would also constitute a violation of ''this chapter,'' as used in NDCC 38–12.1–08.

North Dakota's proposed addition of the phrase ''or willfully'' to subsection (2) of NDCC 38–12.1–08 would extend individual criminal penalties to cases where the individual's conduct is willful or knowing, rather than simply ''knowingly,'' as the statute previously read. For a discussion of North Dakota's definitions of ''knowing'' and ''willful,'' see 59 FR 37423, 37428–37429; July 22, 1994. North Dakota's provision, as proposed, and as pointed out in its October 19, 1995, letter, would also subject individuals (whether or not corporate officers acting for a corporation) to criminal penalties for knowingly reporting false information.

North Dakota's existing provision at NDCC 38–12.1–08(2), and the re-proposed revision to it, when read in conjunction with the newly proposed provisions at NDCC Chapter 12.1–03, provide for individual criminal penalties against corporate officers in all of the situation in which individual criminal penalties are authorized under SMCRA Section 518(f). Since failure or refusal to comply with any order of the Commission would be included as a violation, without the few exceptions granted in SMCRA Section 518(e) and (f), individuals might be subject to penalties for still more actions or omission than required by SMCRA

Section 518, and therefore North Dakota's statute is no less stringent than SMCRA. In addition, individuals would be subject to criminal penalties for knowingly reporting false information in all of the situations in which individuals are subjected to such criminal penalties under SMCRA Section 518(g).

B. Civil Penalties

North Dakota's proposed new paragraph at NDCC 38–12.1–08(3), while similar to the first paragraph, NDCC 38–12.1–08(1), goes beyond it in that it applies to ''Any corporation or any person who controls the activity of a corporation who violates this chapter.'' The corporation or person's conduct need not be willful or knowing. The term, ''any person,'' refers to a ''director, officer, or agent or a corporate permittee'' and is intended by the State to be broader in its coverage than simply attempting to list the position of everyone to whom the paragraph might apply (7/8, 9/98 telephone conversations, administrative record No. ND–W–22).

To make North Dakota regulations consistent with the North Dakota statute, in a August 1, 1997 revision, North Dakota changed ''willfully *and* knowingly'' to ''willfully *or* knowingly'', thereby strengthening the scienter requirement so that it could apply to more cases than those in SMCRA or the Federal regulations.

Based on the above discussion, the Director finds that North Dakota's proposed statutory revisions at NDCC 38–12.1–08 to be no less stringent than SMCRA Section 518(f) and (g), and is approving the proposed revisions and additions. The Director also finds that the approval of this amendment satisfies both parts of the required amendment at 30 CFR 934.16(y). Therefore, he is removing that required amendment.

3. NDAC 43–02–01: Coal Exploration, Individual Civil Penalties, Regulatory Provisions (SMCRA 518(f))

In a previous review of the North Dakota coal exploration program and proposed amendments to that program, OSM found that the program lacked regulations imposing civil and/or criminal penalties on individual officers of a corporation when the corporation commits a violation of the coal exploration program (59 FR 37423, 37428–37429; July 22, 1994). A requirement for North Dakota to amend the program was codified at 30 CFR 934.16(z) (59 FR 37423, 37432; July 22, 1994), which required revision of NDAC 43–02–01–05 to specifically address the circumstances under which a corporate director, officer, or agent maybe individually subject to civil or criminal penalties in connection with a violation committed by a corporation. In response to this amendment requirement, North Dakota in its October 19, 1995 letter, and as modified in its August 1, 1997 letter, proposed the following addition to its regulations at NDAC 43–02–01:

(1) Whenever a corporate permittee violates a condition of a permit, or any other rule or regulation imposed under this chapter and NDCC 38–12.1, or fails or refuses to comply with an order issued by the commission pursuant to NDCC 38–12.1–04(3), or any order incorporated in a final decision issued by the commission, except an order incorporated in a decision requiring the payment of a penalty, any director, officer, or agent of such corporation who willfully or knowingly authorized or carried out such violation, failure, or refusal shall be held accountable, and the commission shall enforce the civil and criminal penalties provided against the corporation and the corporate directors, officers, and agents when the corporation commits such violation, failure, or refusal, as provided by law.

(2) A civil penalty may be assessed by the commission as authorized by NDCC 38–12.1–08 only after the person or persons have been given an opportunity for public hearing pursuant to the procedures specified in NDCC Ch. 28–32.

(3) Any civil penalties assessed may be recovered by the commission in a civil action in the North Dakota district court for the county in which the violation occurred or in which the party assessed has his or her residence or principal office in the state.

Proposed paragraph (1) of NDAC 43–02–01 tracks the language of SMCRA 518(f). The proposal would specify that all violations of the coal exploration program are (in the defined circumstances) subject to individual penalties; in SMCRA 518(f), it states that ''Whenever a corporate permittee violates a condition of a permit * * *.'' In addition, the proposed North Dakota regulation states that the corporate officers ''shall be held accountable,'' and therefore individually liable for criminal and civil penalties. Moreover, the proposed regulatory language further states that the Commission shall enforce the program's civil and criminal penalties against both the corporation and the corporate officers.

Regarding failures or refusals to comply, the proposed language specifies that all corporate officers who willfully or knowingly authorized or carried out the failure or refusal shall be held accountable, not only those corporate officer(s) with ''primary responsibility'' for that aspect of the operation; this language extends the reach to corporate officers subject to individual penalties for failure or refusal to comply to the same degree provided under SMCRA Sections 518(e) and (f). The proposed regulatory language also exempts from individual penalties failure or refusal to comply with orders incorporated in decisions requiring the payment of a penalty, as do SMCRA 518(e) and (f). The proposed North Dakota regulatory language also specifically addresses the circumstances under which a corporate director, officer, or agent may be individually subject to civil or criminal penalties in connection with a violation, failure, or refusal committed by a corporation.

Proposed paragraph (2) of NDAC 43–02–01 is substantively the same as the first sentence of SMCRA 518(b), and thus provides for the same due process appeals for individual civil penalties as does SMCRA 518(f) (by referencing 518(b)).

Proposed paragraph (3) of NDAC 43–02–01 provides for the recovery of individual civil penalties through civil actions, to the same extent as SMCRA 518(d).

Based on the above discussion, the Director finds the proposed rules at NDAC 43–02–01 (1) through (3) to be no less stringent than SMCRA Sections 518(b), (d), (e), and (f) regarding authorization for and procedures for individual civil and criminal penalties. The approval of this proposal would also satisfy the required program amendment codified at 30 CFR 934.16(z) (59 FR 37423, 37432; July 22, 1994). The Director is therefore removing this required program amendment.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment in the May 2, 1995 **Federal Register** (60 FR 21484; administrative record No. ND W–04), the November 9, 1995 **Federal Register** (69 FR 56549; administrative record No. ND–W–16), and the September 4, 1997, **Federal Register** (62 FR 46695; administrative record No. ND–W–19), but no comments were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments from various Federal agencies with an actual or potential interest in the North Dakota program and in the proposed amendment in an April 20, 1995, letter (administrative record No. ND–W–03), a

November 9, 1995 **Federal Register** notice (60 FR 56549; administrative record No. ND–W–16), and a September 4, 1997 **Federal Register** notice (62 FR 46695; administrative record No. ND–WS–19).

The Agricultural Research Service of the U.S. Department of Agriculture responded on May 5, 1995 that it had no comment or additions to the amendment (administrative record No. ND–W–05).

The U.S. Army Corps of Engineers responded on May 9, 1995 that it ''found the changes to be satisfactory to our agency'' (administrative record No. ND–W–07).

The Bureau of Indian Affairs responded on May 12, 1995 that ''[w]e have no objections to the amendment because it does not affect Indian Lands'' (administrative record No. ND–W–08).

Rural Economic and Community Development of the U.S. Department of Agriculture responded on May 23, 1995 that it had no comment (administrative record No. ND–W–09).

The Mine Safety and Health Administration (MSHA) of the U.S. Department of Labor responded on June 2, 1995 that the amendment ''appears not to conflict with any MSHA regulations'' (administrative record No. ND–W–11)).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that North Dakota proposed to make in its amendment pertain to air or water quality standards. However, OSM requested EPA's comments on April 20, 1995 (administrative record No. NDW–03 with the proposed amendment (administrative record No. ND W–01). EPA did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. ND W–03). Neither the SHPO nor the ACHP responded to OSM's request.

V. Director's Decision

Based on the aforementioned findings, the Director approves the proposed amendment as submitted on April 12, 1995, and as supplemented with additional explanatory information and regulations on October 19, 1995, and August 1, 1997, as discussed in:

Finding No. 1, NDCC 38–14.1–37(4), the statute that specifies that under certain circumstances a coal mine operator who received assistance for permitting or training reimburse the State of North Dakota for the costs of that assistance;

Finding No. 2, NDCC 38–12.1–08, the statute in which is added the term, ''or willfully'' to its existing language, ''who knowingly violates this chapter, or any permit condition or regulation implementing this chapter,'' and references NDCC 12.1–03–03, which makes a person legally accountable for any conduct he performs or causes to be performed in the name of an organization or in its behalf to the same extent as if the conduct were performed in his own name or his behalf;'' and

Finding No. 3, NDAC 43–02–01, the regulation imposing individual civil and criminal penalties on individual officers of a corporation when the corporation commits a violation of the coal exploration program.

The Federal regulations at 30 CFR Part 934, codifying decisions concerning the North Dakota program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by Section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that Section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

An environmental impact statement is not required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 1, 1998.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.15 is amended, as depicted in the table below, by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
April 12, 1995	September 16, 1998	Statute: NDCC 38–14.1–37(4); NDCC 38–12.1–08; Rule: NDAC 43–02–01.

3. Section 934.16 is amended by removing and reserving paragraphs (y) and (z).

[FR Doc. 98–24781 Filed 9–15–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 122–4078c; FRL–6160–8]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Interim Final Determination that Pennsylvania Continues to Correct the Deficiencies of its Enhanced I/M SIP Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rule granting full conditional approval of the Commonwealth of Pennsylvania's enhanced motor vehicle inspection and maintenance (I/M) program, under section 348 of the National Highway System Designation Act of 1995 (NHSDA) and section 110 of the Clean Air Act (CAA). Based on the approval, EPA is making an interim final determination, by this action, that the Commonwealth has continued to correct the deficiency prompting the original disapproval of the Pennsylvania enhanced I/M SIP revision. This action will defer the application of the offset sanction which would have been implemented on August 29, 1998, and defers the future 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 approval of the Commonwealth's submittal. EPA will publish a final action taking into consideration any comments received on EPA's direct final rule and this interim final action.

DATES: Effective dates September 16, 1998.

COMMENTS: Comments must be received by October 16, 1998.

ADDRESSES: Comments should be mailed to Marcia Spink, Associate Director, Office of Air Programs, Mail code 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street—14th Floor, Philadelphia, Pennsylvania 19103; 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: Brian Rehn, (215) 814–2176, at the EPA Region III address above; or via e-mail at rehn.brian@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

Pennsylvania's March 1996 I/M SIP Revision Approval Status

By means of an April 13, 1995 letter, EPA notified Pennsylvania that the conditional approval of the Pennsylvania enhanced I/M SIP revision, approved in August of 1994, had been converted to a disapproval (60 FR 47084). The letter triggered the 18-month time clock for the mandatory application of sanctions under section 179(a) of the CAA. That 18-month sanctions clock expired on October 13, 1996. On March 22, 1996, the Commonwealth of Pennsylvania submitted an enhanced I/M SIP revision to EPA, requesting action under the NHSDA of 1995 and the CAA. On June 27, 1996 and July 29, 1996, supplements to the March 22, 1996 SIP revision were officially submitted to EPA.

On October 3, 1996, EPA proposed in the **Federal Register** (61 FR 51598) conditional approval, on an interim basis for an 18-month period, of a SIP submitted by the Commonwealth in March 1996. That proposed SIP approval was granted under authority of the National Highway Systems Designation Act of 1995 (NHSDA) and the Clean Air Act (CAA). EPA simultaneously issued an interim final determination action in the **Federal Register** (61 FR 51598), which deferred the imposition of the 2:1 offset sanction upon new or modified sources seeking permits under section 173 of the CAA. The 2:1 offsets sanction would otherwise have been automatically imposed upon Pennsylvania on October 13, 1996. Since EPA had received a SIP submittal from the Commonwealth of Pennsylvania for its enhanced I/M program in March of 1996, and since EPA proposed approval of that SIP revision on October 3, 1996, EPA believed the October 3, 1996 interim final determination to defer sanctions was justified. EPA concluded at that time that it was more than likely than not that Pennsylvania had corrected the deficiency which had initiated the sanctions clock, and therefore, did not believe sanctions were warranted simply because EPA had insufficient time to complete its final rulemaking action to approve the Commonwealth's March 1996 I/M program SIP revision. On January 28, 1997, EPA issued in the **Federal Register**, final interim conditional approval of the Commonwealth's March 1996 SIP revision (62 FR 4004).

On November 13, 1997, February 24, 1998, and August 21, 1998, Pennsylvania submitted formal revisions to its enhanced I/M program SIP. The purpose of these SIP revisions was to remedy deficiencies identified by EPA in its January 28, 1997 (62 FR 4004) interim conditional approval of Pennsylvania's enhanced I/M program SIP. It also served to transmit