

April 4, 1980. During this time, no comments were submitted.

Change to O₃ Designation

The Commonwealth of Virginia has revised the O₃ designation for Smyth County from nonattainment of primary standards to attainment. The State submitted air quality data showing that no violations of the O₃ standards occurred during eight consecutive quarters (October 1977 to September 1979). Therefore, EPA redesignates this area to "better than national standards" in accordance with Virginia's revision.

EPA Actions

Although this action is being taken as a final rule, EPA will consider comments at any time and make appropriate changes in attainment designations. The Administrator finds good cause to make this action immediately effective. EPA has a responsibility to take final action on this redesignation request as soon as possible in order to lift growth restrictions for Smyth County.

All comments should be addressed to: Mr. Howard R. Heim, Jr., Chief (3AH12), Air Programs Branch, U.S.

Environmental Protection Agency—Region III, Curtis Building—Tenth Floor, 6th & Walnut Streets, Philadelphia, PA 19106, ATTN: 107-VA-1.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sections 107(d), 171(2), 301(a), of the Clean Air Act, as amended (42 U.S.C. 7407(d), 7501(2), 7601(a))

Dated: June 24, 1980.
Douglas M. Costle,
Administrator.

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES APPROVAL OF SECTION 107 DESIGNATION FOR THE COMMONWEALTH OF VIRGINIA

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows. Section 81.347 is amended by revising the table Virginia O₃ to read as follows.

Subpart C—Section 107 Attainment Status Designation

§ 81.347 Virginia.

* * * * *

Virginia—O₃

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
I Southwest Virginia-Eastern Tennessee Interstate AQCR		x
II Valley of Virginia Intrastate AQCR		
Roanoke County	x	
Roanoke City	x	
Salem City	x	
Remainder of AQCR		x
III Central Virginia Intrastate AQCR		x
IV Northeastern Virginia Interstate AQCR		
Stafford County	x	
Remainder of AQCR		x
V State Capital Intrastate AQCR		
Richmond City	x	
Henrico County	x	
Chesterfield County	x	
Remainder of AQCR		x
VI Hampton Roads Intrastate AQCR		
Chesapeake City	x	
Norfolk City	x	
Portsmouth City	x	
Suffolk City	x	
Virginia Beach City	x	
Newport News City	x	
Hampton City	x	
Remainder of AQCR		x
VII National Capital Interstate AQCR	x	

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40 CFR Part 434

[FRL 1526-2]

Effluent Guidelines and Standards; Coal Mining Point Source Category New Source Performance Standards

AGENCY: Environmental Protection Agency ("EPA").
ACTION: Amendment to Regulation.

SUMMARY: This amendment modifies the definition of a "new source coal mine" presently set forth in EPA's new source performance standards for the coal mining point source category, 40 CFR 434.11(j). The modification is required by the Opinion and Judgment of the United States Court of Appeals for the Third Circuit in the case of *Pennsylvania Citizens Coalition et al. v. EPA*, No. 79-1466 (Slip Op. on Rehearing March 26, 1980). As required by the Third Circuit, this amendment alters the definition of a new source coal mine to relate to the date of proposal of the new source performance standards rather than the date of final promulgation of those regulations.

EFFECTIVE DATE: This amendment shall become effective as of June 28, 1980, as is more fully discussed below.

FOR FURTHER INFORMATION CONTACT: Barry S. Neuman, Office of General Counsel, Water and Solid Waste Division (A-131), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460 (202) 755-0753.

SUPPLEMENTARY INFORMATION:

A. Background

On January 12, 1979, EPA promulgated new source performance standards (NSPS) applicable to discharges of water pollutants from new point sources in the coal mining point source category. 44 FR 2586 (codified at 40 CFR Part 434). The regulation defined a "new source coal mine" as a coal mine which:

(1) Was not assigned the applicable Mining Safety and Health Administration (MSHA) identification number under 30 CFR Part 82 prior to the promulgation date of these new source performance standards and which, at such date, had no contractual obligation to purchase unique facilities or equipment as defined in Appendix A of 40 CFR Part 6, Guidance on Determining a New Source, or

(2) Is determined by the Regional Administrator to constitute a "major alteration" in accordance with 40 CFR Part 6 Appendix A (even if the applicable MSHA identification number is assigned prior to the promulgation date of new source performance standards). In making this determination, the Regional Administrator shall take into account the occurrence of one

or more of the following events, in connection with the mine for which the NPDES permit is being considered, after the date of promulgation of applicable new source performance standards:

- (i) A mine operation initiates extraction of a coal seam not previously extracted by that mine;
- (ii) A mine operation discharges into a drainage area not previously affected by waste water discharges from the mine;
- (iii) A mine operation causes extensive new surface disruption;
- (iv) A mine operation initiates construction of a new shaft, slope, or drift;
- (v) A mine operation makes significant capital investment in additional equipment or additional facilities;
- (vi) Such other factors as the Regional Administrator deems relevant. (Emphasis added.)

This definition was subsequently challenged in the United States Court of Appeals for the Third Circuit by petitioners in *Pennsylvania Citizens Coalition et al. v. EPA*, No. 79-1466. Petitioners contended that under section 306(a)(2) of the Clean Water Act, 33 U.S.C. 1316(a)(2), a new source must be defined in relation to the date when NSPS are proposed, and cannot be defined in relation to the date of final NSPS promulgation.

Initially, the Court dismissed this and a related petition for lack of subject matter jurisdiction. The parties in Case No. 79-1466 then filed a Joint Petition for Rehearing on the jurisdictional question, requesting the Court to consider the merits of this challenge. The Court granted the Joint Petition, and on March 26, 1980, it issued an Opinion on Rehearing which substantially agreed with petitioners' contentions and invalidated the "new source coal mine" definition. The Third Circuit held that under section 306, "the proposal of new source standards puts the world on notice (of the likely requirements to be applicable to new sources), and * * * the regulations, whenever promulgated, apply to all who have been put on notice * * *. [P]romulgated new source standards apply to construction commenced after publication of proposed regulations." The Court remanded the "new source coal mine" definition to EPA for modification in accordance with its opinion. On May 6, 1980, the Court denied EPA's Petition for Rehearing on this issue.

In accordance with the Court's mandate, the Agency is hereby amending 40 CFR 434.11(i) to change the reference date for determining new source coal mines from the date of NSPS promulgation (January 12, 1979) to the date when NSPS regulations for coal mines were proposed (September 17, 1977).

B. Effective Date:

The Administrative Procedure Act provides that publication of a rule shall precede its effective date by at least 30 days except "as otherwise provided by the Agency for good cause found and published with the rule." 5 U.S.C. 553(d). Today's amendment is essentially a ministerial act required by the Third Circuit to implement its mandate. Moreover, the Agency notes that the Third Circuit has held the regulation to be an invalid interpretation of the statute. Accordingly, the Agency finds that good cause exists to make this amendment effective as of the date of publication in the Federal Register, rather than 30 days thereafter.

The amendment shall apply to all coal mines for which "NPDES" (National Pollution Discharge Elimination System) proceedings have not been completed as of its effective date. Moreover, as the amendment states, permits previously issued under the original regulation are subject to reopening, and may be subject to modification, where necessary and appropriate to comply with the Third Circuit's decision. Most facilities which were classified as "existing" sources under the old regulation will qualify as "existing" sources under the amendment. As to those sources which would not so qualify, the Agency notes the following considerations.

First, the technology-based effluent limitations applicable to existing and new sources are virtually identical.¹ Therefore, from this standpoint, classifying a coal mine as "new" or "existing" is largely academic. However, under section 511(c)(1) of the Clean Water Act, 33 U.S.C. 1371(c)(1), NPDES permits for new, but not existing, sources are subject to the requirements of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C) ("NEPA").

Many coal mines have obtained NEPA review and approval by another federal agency, irrespective of the Clean Water Act. In other cases, NPDES permits are issued by state permitting authorities pursuant to EPA-approved state NPDES programs; as to these state-issued permits, NEPA does not apply. In many cases, coal mines which have been issued permits as existing sources under the original regulation have proceeded to substantial construction or operation in reliance upon the terms of their permit. In other cases, however, permittees may have done little, if any,

¹ The limitation for total iron is marginally more stringent for new sources than for existing sources; otherwise, the requirements are the same. Compare, e.g., 40 CFR 434.45(a) with 434.32(a).

construction between the time of permit issuance and today's amendment.

Regional Administrators shall consider all of these factors in deciding whether a permit modification is necessary and appropriate to implement the Third Circuit's decision.

Dated: June 24, 1980.

Douglas M. Costle,
Administrator.

§ 434.11 [Amended]

40 CFR Part 434, § 434.11(i), is amended to read as follows:

* * * * *

(i) The term "new source coal mine" shall mean a coal mine which:

(1) Was not assigned the applicable Mining Safety and Health Administration (MSHA) identification number under 30 CFR Part 82 prior to the proposal date of these new source performance standards and which, at such date, had no contractual obligation to purchase unique facilities or equipment as defined in Appendix A of 40 CFR Part 6, Guidance on Determining a New Source, or

(2) Is determined by the Regional Administrator to constitute a "major alteration" in accordance with 40 CFR Part 6 Appendix A (even if the applicable MSHA identification number is assigned prior to the proposal date of new source performance standards). In making this determination, the Regional Administrator shall take into account the occurrence of one or more of the following events, in connection with the mine for which the NPDES permit is being considered, after the date of proposal of applicable new source performance standards:

- (i) A mine operation initiates extraction of a coal seam not previously extracted by that mine;
- (ii) A mine operation discharges into a drainage area not previously affected by waste water discharges from the mine;
- (iii) A mine operation causes extensive new surface disruption;
- (iv) A mine operation initiates construction of a new shaft, slope, or drift;
- (v) A mine operation makes significant capital investment in additional equipment or additional facilities;
- (vi) Such other factors as the Regional Administrator deems relevant.

Note.—NPDES permits have been issued prior to June 27, 1980, under a previous regulation which was held invalid in *Pennsylvania Citizens Coalition et al. v. EPA*, No. 79-1466 (3rd Cir. Slip Op. March 20, 1980, Rehearing Denied May 6, 1980). Such permits may be subject to reopening and modification by the Regional Administrators where

necessary and appropriate to implement the Third Circuit's mandate.

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-36

[FPMR Amdt. F-40]

ADP Management; Hardware and Data Standards

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation provides standard terminology that shall be used in solicitation documents when conformance with Federal Information Processing Standards Publications (FIPS PUBS) 60, 61, 62, and 63 is required. These FIPS PUBS are briefly described in the regulation. This regulation also provides reference to FIPS PUBS 6-3 and 66 applicable to the interchange of machine-processable data between and among agencies. Each FIPS PUB contains its own applicability, implementation, and waiver requirements. The intended effect of this action is to provide in Subpart 101-36.13 standard terminology for Government-wide use that brings to the attention of potential offerors on specific solicitations the requirement for pertinent FIPS PUB compliance.

EFFECTIVE DATE: This regulation was effective June 23, 1980, and shall be applied to solicitations issued on or after June 23, 1980.

FOR FURTHER INFORMATION CONTACT: L. Perlman, Procurement Policy and Regulations Branch, Policy and Evaluation Division (202-566-0834).

SUPPLEMENTARY INFORMATION: (a) FIPS PUBS 60, 61, 62, and 63 were developed by the National Bureau of Standards (NBS) and issued by the Secretary of Commerce under Pub. L. 89-306 (40 U.S.C. 759(f)) and Executive Order 11717. (See 44 FR 10098, February 16, 1979, 44 FR 32968, June 29, 1979, and 44 FR 50078, August 27, 1979 (correction 44 FR 51294, August 31, 1979).) It should be noted that the provisions of FIPS PUBS 60, 61, 62, and 63 are effective on June 23, 1980, irrespective of the provisions or effectivity of this regulation. FIPS PUB 60, Input/Output Channel Interface, provides the basic hardware interface structure for transmission of control information and data to and from peripheral equipment. FIPS PUB 61, Channel Level Power Control Interface,

provides for electrical power control of computer peripheral subsystems. FIPS PUB 62, Operational Specifications for Magnetic Tape Subsystems, and FIPS PUB 63, Operational Specifications for Rotating Mass Storage Subsystems, are used with FIPS PUBS 60 and 61 to provide for full plug-to-plug interchangeability of magnetic tape and disk peripheral components. Unlike all previous FIPS PUBS reflected in Subpart 101-36.13, FIPS PUBS 60, 61, 62, and 63 vest applicability waiver authority in the Secretary of Commerce rather than in the agency having the requirement for an ADP acquisition. Because of this provision, each agency should be aware that if waivers are considered appropriate, requests should be initiated early in the agency requirements determination process to avoid delays in the initiation of acquisition.

(b) A forthcoming action that will amend Subpart 1-4.11 of the Federal Procurement Regulations (FPR) adds a provision that requires an agency to determine whether a substantial change in the Government's requirements has occurred that would necessitate a resolicitation when the requirements for conformance with a standard are changed after release of a solicitation. (See FPR 1-3.805-1(d).)

(c) The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

1. The table of contents for Part 101-36 is amended by adding the following new entries:

Sec.	101-36.1304-20	FIPS PUB 60, Input/Output (I/O) Channel Interface.
	101-36.1304-21	FIPS PUB 61, Channel Level Power Control Interface.
	101-36.1304-22	FIPS PUB 62, Operational Specifications for Magnetic Tape Subsystems.
	101-36.1304-23	FIPS PUB 63, Operational Specifications for Rotating Mass Storage Subsystems.

Subpart 101-36.13—Implementation of Federal Information Processing and Federal Telecommunication Standards Into Solicitation Documents

2. Sections 101-36.1304-20, 101-36.1304-21, 101-36.1304-22, and 101-36.1304-23 are added as follows:

§ 101-36.1304-20 FIPS PUB 60, Input/Output (I/O) Channel Interface.

(a) FIPS PUB 60 defines the functional, electrical, and mechanical interface specifications for connecting computer peripheral equipment as a part of

automatic data processing (ADP) systems. This standard, with a companion standard for power control (FIPS PUB 61), defines the hardware characteristics for the I/O channel level interface. Two other closely related standards specify how this interface is to be used for the connection of particular classes of peripheral devices. These standards are FIPS PUB 62, Operational Specifications for Magnetic Tape Subsystems, and FIPS PUB 63, Operational Specifications for Rotating Mass Storage Subsystems.

(b) This standard provides that FIPS PUB 60 is applicable to the acquisition of all ADP systems and peripheral subsystems acquired by the Federal Government except those minicomputer, microcomputer, and other small-scale systems that are specifically excluded by the National Bureau of Standards (NBS). A list of these currently excluded systems and the current criteria for exclusion is developed, maintained, and periodically distributed to all Federal agencies by NBS and is publicly available from NBS upon request. The standard contains additional applicability, implementation, and waiver provisions. If waivers are applicable to a solicitation, the solicitation document shall so state. Questions regarding FIPS PUBS 60, 61, 62, or 63 may be directed to the System Component Division, A-219 Technology, National Bureau of Standards, Washington, DC 20234 (telephone 301-921-2705).

(c) The correct operation of all interfaces required to conform to FIPS PUB 60 must be verified by NBS before the acceptance of all applicable ADP equipment. A list of equipment having verified interfaces will be established, maintained, and periodically distributed to all Federal agencies by NBS and will be available from NBS upon request. This list will identify each interface verified and the conditions of verification. The solicitation document shall require offerors to state the status of verification for those interfaces for which conformance is required.

(d) The standard terminology for use in solicitation documents is:

Unless otherwise excluded as specified in FIPS PUB 60, or unless a waiver is granted following the waiver procedures specified in FIPS PUB 60, ADP systems and peripheral subsystems that may result from this solicitation, and for which operational specifications FIPS PUBS (such as FIPS PUBS 62 and 63) have been issued and are in effect, must conform to FIPS PUB 60. The correct operation of these systems' conforming interfaces must be verified before the acceptance of all applicable ADP equipment in accordance with FPMR 101-36.1304-20(c). Arrangements for verification may be made