opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 27th day of October 1980.

J. K. Atwell,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-33945 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Physical Protection of Plants and Materials Requirements for the Physical Protection of Nuclear Power Plants

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission is extending from November 1, 1980 to December 1, 1980 its current relief from pat-down searches of regular employees at nuclear power reactors in order to allow time for the Commission to consider revisions to its rules in 10 CFR § 73.55 intended to finalize requirements for entry searches at such facilities.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: L. J. Evans, Jr., Chief, Regulatory Improvements Branch, Division of Safeguards, Office of Nuclear Material Safety and Safegyards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 427–4181.

SUPPLEMENTARY INFORMATION: On July 31, 1979, the Commission changed the date from August 1, 1979, to November 1, 1979, when pat-down searches of regular employees of nuclear power plant licensees had to be implemented. The rationale for this extension was provided in the **Federal Register** notice on this subject, 44 FR 47758, August 15, 1979. The Commission further extended the implementation date to November 1, 1980. The rationale for that extension is contained in 44 FR 65969.

The Commission is presently considering issuing proposed revisions to 10 CFR § 73.55(d)(1) to finalize requirements for personnel searches at protected area portals of power reactors. The *thirty day* extension of the relief from physical pat-down searches of regular employees contained herein is intended to allow sufficient time for Commission consideration of the proposed revisions. Because this rule delays a requirement, and merely continues a temporary situation for a limited period of time, the Commission finds that notice and public procedure are unnecessary and that the change can be made immediate effective without the customary 30 days period of notice required by 5 U.S.C. 553.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following Amendment to Title 10 Chapter 1, Code of Federal Regulations, Part 73 is published as a document subject to codification.

1. The unnumbered prefatory paragraph of § 73.55 of 10 CFR Part 73 is amended to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

Each licensee who is authorized on February 24, 1977, to operate a nuclear power reactor pursuant to Part 50 of this Chapter shall comply with the requirements of paragraphs (b), (d), (f), (g), and (h) of this section, except for any requirement involving construction and installation of equipment not already in place expressed in paragraphs (d)(1), (d)(7), (d)(8), (f)(3) and (h)(4), by May 25, 1977. The licensee shall submit by May 25, 1977, an amended physical security plan describing how the licensee will comply with all of the requirements of this section including schedules of implementation. The licensee shall implement his plan and comply with all of the provisions of this section as soon as practicable after NRR approval of his plan but no later than February 23, 1979. Each applicant for a license to operate a nuclear power reactor pursuant to Part 50 of this chapter whose application was submitted prior to February 24, 1977 shall submit by May 25, 1977, an amended physical security plan describing how the applicant plans to comply with the requirements of this section including schedules of implementation. If such applicant receives an operating license after February 24, 1977 he shall comply with the requirements of paragraphs (b), (d), (f), (g), and (h) of this section, except for construction and installation not already in place pursuant to paragraphs (d)(1), (d)(7), (d)(8), (f)(3) and (h)(4) of this section by May 25, 1977, or on the date of receipt of the operating license, whichever is later, and implement his plan and comply with all of the requirements of this section by February 23, 1979 or on the date of receipt of the operating license whichever is later. Each applicant for a license to operate a nuclear power reactor pursuant to Part 50 of this Chapter whose application is submitted after February 24, 1977, shall include in the physical security plan required by § 50.34(c) the information identified in paragraphs (a) through (h) of this section and if such applicant receives an operating license, shall comply with the provisions of this section on receipt of the operating license. Except for individuals for whom the licensee has a well-grounded suspicion that such individuals are carrying firearms, explosives, or incendiary devices, a licensee need not implement the physical search requirement of paragraph (d)(1) of this section for individuals who are regular employees of the licensee at the site at which the licensee is authorized to operate a nuclear power reactor pursuant to Part 50 of this Chapter until December 1, 1980, unless the Commission directs otherwise prior to that date. Until that date, the Commission has determined that the search requirement of paragraph (d)(1) of this section, implemented using only equipment capable of detecting firearms, explosives and incendiary devices, satisfies the performance requirements of this section as they apply to searches of regular employees of the licensee at the site entering the protected area of the nuclear power reactor.

* * * * *

(Sec. 161i, Pub. L. 83–703, 68 Stat. 948, Pub. L. 93–377, 88 Stat. 475; Sec. 201, Pub. L. 93–438, 88 Stat. 1242–1243, (42 U.S.C. 2201, 5841))

Dated At Washington, D.C., this 30th day of October, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-34156 Filed 10-30-80; 11:08 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

Amendments Relating to the Minimum Maturities on Time Deposits and Minimum Notice Provisions for Savings Deposits

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation ("Board", "FDIC") has adopted a significant final rule redefining the term "time deposit" so that all time deposits will have a minimum maturity of 14 days rather than 30 days as provided under present regulations. The action was taken in the light of recent amendments to Regulation D (Reserve requirements) by the Board of Governors of the Federal Reserve System. These revisions define time deposits as deposits having a maturity of not less than 14 days. The Board of Governors has approved a corresponding revision to Regulation Q governing interest on deposits.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: F. Douglas Birdzell, Counsel or John F. Breyer, Jr., Attorney, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429 (202–389–4324 or 202–389–4637).

SUPPLEMENTARY INFORMATION: In connection with a revision of Regulation D by the Board of Governors of the Federal Reserve System, the definition of a time deposit, for Reserve requirement purposes, was shortened from a minimum of 30 days to a minimum of 14 days to help improve the ability of domestic depository institutions to compete with banking offices located abroad and with issuers of short-term paper in this country. Incident to its action, the Board of Governors amended Regulation Q relating to interest on deposits to provide for a corresponding 14-day minimum term on time deposits in lieu of the present 30-day minimum. Corresponding action is being taken to amend the provisions of Part 329 of FDIC's regulations governing interest on deposits in order to harmonize FDIC regulations with those of the Board of Governors. (The Federal Home Loan Bank Board may or may not take similar action.) Certain other conforming amendments to FDIC regulations will be made to reduce the minimum 30-day hold period on ordinary savings deposits to 14 days for consistency with the major amendments to the regulation and to modify the definition of time deposit open account. Since the amendment conforms FDIC regulations to those of the Board of Governors, no alternative courses of action were considered. While no economic impact analysis was done in connection with this amendment, it is not expected that the amendment will have any adverse effects on insured state nonmember banks and it is not expected that it will increase their costs. In fact, it should be beneficial in that it will probably enhance their competitive position *vis-a-vis* banking offices located abroad and issuers of short-term paper in this country. No adverse impact on small banks is foreseen. There will be no recordkeeping or reporting requirements incident to this regulation. Normal procedures with respect to notice, comment and deferred effective date were not followed in connection with these amendments because they impose no burden and immediate action is required for consistency with Federal Reserve regulations. 12 CFR Part 329 is amended as follows:

1. Section 329.1(c) and footnote 1a thereto is amended as follows:

§ 329.1 Definitions.

* * * * *

(c) *Time certificates of deposit.* The term "time certificate of deposit" means a deposit evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of such deposit is payable:

(1) On a certain date, specified in the instrument, not less than fourteen (14) days after the date of the deposit.

(2) At the expiration of a specified period not less than 14 days after the date of the instrument: or

(3) Upon written notice to be given not less than 14 days before the date of repayment.[1a]

* * * * *

2. Section 329.1(d) and footnotes 2 and 3 thereto are amended as follows:

§ 329.1 Definitions.

* * * * *

(d) *Time deposits, open account.* The term "time deposit, open account" means a deposit other than a "time certificate of deposit," with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than 14 days after the date of the deposit,[2] or prior to the expiration of the period of notice which must be given by the depositor in writing not less than 14 days in advance of withdrawals.[3]

* * * * *

3. Section 329.1(e)(1)(iii) of FDIC's regulations is amended as follows:

§ 329.1 Definitions.

* * * * *

(e) *Savings deposits.* (1) * * *

(i) * * *

(ii) * * *

(iii) In the case of both paragraphs (e)(1)(i) and (e)(1)(ii) of this section, with respect to which the depositor is not required by the deposit contract but may at any time be required to give notice in writing of an intended withdrawal not less than 14 days before such withdrawal is made [5] and which is not payable on a specified date or at the expiration of a specified time after the date of deposit.

* * * * *

4. Section 329.5(c)(2) is amended by revising the third sentence thereof as follows:

§ 329.5 Withdrawal of savings deposits.

* * * * *

(c) *Manner of payment of savings deposits.*

* * * * *

(2) * * * In accordance with Section 329.1(e)(iii) of this Part 329, the bank must reserve the right to require the depositor to give notice in writing of an intended withdrawal (transfer) not less than 14 days before such withdrawal (transfer) is made. * * *

* * * * *

5. Section 329.101 is amended by revising the first sentence of footnote 19 thereto as follows:

§ 329.101 Computation and payment of interest on time and savings deposits.

* * * * *

19. Part 329 of the Corporation's regulations prescribes certain maximum interest rates for consumer-type time deposits (*i.e.*, deposits of less than $100,000) with maturity intervals of 14 days or more and 90 days or more. * * *

The provisions of section 553(b) and 553(d) of the Administrative Procedure Act (5 U.S.C. 553(b) and 553(d)) were not followed in connection with the issuance of this regulation because the regulation is essentially non-restrictive, expands rights conferred by prior regulation and the public interest is best served by its immediate issuance with an October 30, 1980 effective date.

[1a] If the certificate of deposit provides merely that the bank reserves the right to require notice of not less than fourteen (14) days before any withdrawal is made, the bank must require such notice before permitting withdrawal.

[2] Deposits, such as Christmas club accounts and vacation club accounts, which are made under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than 3 months, constitute "time deposits, open account," even though some of the deposits are made within 14 days from the end of such period.

[3] A deposit with respect to which the bank merely reserves the right to require notice of not less than 14 days before any withdrawal is made is not a "time deposit, open account," within the meaning of the above definition.

[5] * * *

(Secs. 9 and 18, Pub. L. 81–797, 64 Stat. 881, 891, as amended 612 U.S.C. 1819 and 1828)

By order of the Board of Directors, October 27, 1980.

Alan J. Kaplan,

Acting Executive Secretary.

[FR Doc. 80–34039 Filed 10–30–80; 8:45 am]

BILLING CODE 6714–01–M

CIVIL AERONAUTICS BOARD

14 CFR Part 399

[PS–98; Docket No. 37982; Amdt. No. 75 to Part 399]

Domestic Passenger Fare Flexibility; Interim Policy Statement; Correction

AGENCY: Civil Aeronautics Board.

ACTION: Correction to preamble of interim policy statement.

SUMMARY: This corrects an error in the preamble to the CAB's policy statement on domestic passenger fare flexibility. The policy statement amended the Board's upward flexibility zones within which airlines may set domestic passenger fares between markets in the 48 contiguous states and the District of Columbia with limited risk of suspension by the agency.

DATES: Adopted: October 21, 1980. Effective: The policy was put into effect September 24, 1980. The amendment of 14 CFR Part 399 is effective October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Julien R. Schrenk, Chief, Domestic Fares and Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202–673–5298.

SUPPLEMENTARY INFORMATION: A clerical errror was made in transcribing the 2nd sentence, first full paragraph in page 3 of the mimeo copy (2nd sentence, first full paragraph, column 2, 45 FR 70431, 70432, October 24, 1980). The sentence should read: "Our goal, accordingly, has been to develop a means of *correcting* the historical understatement of short-haul costs, *while maintaining* a nonmileage-based fare policy, if practicable."

Dated: October 27, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–33962 Filed 10–30–80; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Coverage of Employees of State and Local Governments; Interim Regulations

AGENCY: Social Security Administration, HHS.

ACTION: Interim regulations.

SUMMARY: These interim regulations change the rules governing the frequency with which States and interstate instrumentalities (which are treated as States to the extent practicable) must deposit social security contributions on wages and salaries paid to covered employees. This new rule will require States and interstate instrumentalities to deposit contributions within 30 days after the end of each calendar month in which wages are paid. These regulations reflect section 503 of the Social Security Disability Amendments of 1980, enacted on June 9, 1980.

DATES: The amendments made by paragraph No. 1 below become effective July 1, 1980, the same date the statutory change became effective. Amendments made by paragraph No 2. become effective January 1, 1981.

Comments must be received on or before December 30, 1980.

ADDRESSES: Written comments should be submitted to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments received in response to this notice will be available for public inspection and copying during regular business hours at the Washington Inquiries Section, Office of Governmental Affairs, Social Security Administration, Department of Health and Human Services, Room 1212, Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Armand Esposito, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–594–7455.

SUPPLEMENTARY INFORMATION: Section 218 of the Social Security Act (the Act) (42 U.S.C. 418) requires the Secretary of Health and Human Services, at a State's request, to enter into an agreement to provide social security coverage of the services of employees of that State and its local government units. All States (and about 54 interstate instrumentalities which are treated as States to the extent practicable) have such agreements. Prior to July 1, 1980 (the effective date of section 503 of the Social Security Disability Amendments of 1980), section 218(e)(1) of the Act gave the Secretary of Health and Human Services discretion to promulgate regulations governing when and how often States and interstate instrumentalities were to pay contributions equivalent to the social security taxes on wages. The regulations in effect prior to July 1, 1980 (20 C.F.R. 404.1255(a)), required payment from the States by deposit in a Federal Reserve Bank, on or before the 15th day of the second month after the calendar quarter in which wages were paid. For an interstate instrumentality, the contribution payments for a calendar quarter were due and payable on or before the last day of the first month of the next calendar quarter. These depository requirements were considerably less restrictive for State and local governmental employers than for private employers and resulted in losses of interest earnings to the Social Security trust funds. Consequently, the Social Security Administration undertook, by regulations, to accelerate the schedule of deposits. These final regulations (20 C.F.R. 404.1255a) were published at 43 F.R. 54083 (November 20, 1978) with a delayed effective date of July 1, 1980. (Section 7 of Pub. L. 94–202 precluded a change in the frequency or due dates for payments and reports until at least 18 months after the change had been published in final form in the **Federal Register.**) These regulations provided that the State pay contributions for wages paid in a month as follows:

(a) For each of the first 2 months in a calendar quarter the payments were to be due on or before the 15th day of the following month; and

(b) For the third month in the calendar quarter, the payments were to be due on or before the 15th day of the second month of the next quarter (For interstate instrumentalities, the payments for the third month were to be due on or before the last day of the following month.).

In addition, because of the cost savings and other advantages of annual wage reporting, which Congress mandated for the private employment sector in 1978, we published final regulations prescribing annual wage reporting for State and local government employers. These regulations were published on June 28, 1979 (44 F.R. 37604), to go into effect on January 1 1981. (The delayed effective date was to comply with Pub. L. 94–202). While these

regulations did not make any change in the frequency with which deposits were to be made, we amended the regulations (20 C.F.R. 404.1255a) to require the filing of a contribution return when the contributions are paid.

On June 9, 1980, the Social Security Disability Amendments of 1980, Pub. L. 96–265, became law. Section 503 of that law amends section 218(e) of the Social Security Act to provide that States must pay their social security contributions within 30 days after the end of each calendar month in which wages are paid. That provision became effective July 1, 1980. These regulations (which supersede those on frequency of deposits which were published on November 20, 1978) reflect that statutory change.

Section 503 also ends the previously required 18 months delay in the effective date of these changes to the regulations.

Also, to carry out the clear intent of Congress, these regulations provide that contributions are to be deposited no later than the preceding workday where the last day for paying contributions falls on a Federal nonworkday.

Effect on Wage Reports and Contribution Returns

The changes in the dates contributions are due do not affect the date contribution returns and wage reports are due during the period July 1 through December 31, 1980. They will still be due quarterly rather than monthly.

Effective January 1, 1981, the annual reporting regulations (44 FR 37604, June 28, 1979) change the date contribution returns and wage reports will be due. Wage reports will be due by February 28 of each year. Contribution returns, however, are to be filed on the same date the contribution payment is due (§ 404.1255a(c)(2)(iii)). We are not changing this rule. However, due to the change in the date the contributions must be paid, there is an actual change in the date the contribution returns must be filed.

Justification for Interim Regulations

Since the amendments to the regulations reflect requirements of the statute concerning which the Secretary has no discretion, we find that publication with Notice of Proposed Rule Making is unnecessary (Administrative Procedure Act, 5 U.S.C. 553(b)(B)). Also, the statutory requirements reflected in these regulations are, by law, now in effect and the results of a Notice of Proposed Rule Making could not change the time period nor the effective date. The new rules for deposits of contributions are effective July 1, 1980.

Although we are not publishing this amendment with a Notice of Proposed Rule Making, we are soliciting public comments on this interim regulation.

Accordingly, these rules are adopted as set forth below.

(Catalog of Federal Domestic Assistance Program Nos. 13.802–13.805, Social Security Program.)

Dated: September 22, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: October 23, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

20 CFR Part 404 is amended as follows:

1. Effective July 1, 1980 § 404.1255a, paragraphs (a) and (c)(5) are revised to read as follows:

§ 404.1255a Place and time for filing contribution returns, and wage reports and making deposits of contributions—for months on or after July 1, 1980.

(a) *Deposits.* Contribution payments for wages paid in a month shall be made as prescribed in § 404.1223. Except as provided in paragraph (c)(2) of this section, contribution payments for wages paid in a calendar month are due and payable within the thirty-day period following the last day of that month.

* * * * *

(c) * * *

(5) *Due date is a Federal nonworkday.* If the due date for paying contributions for the wages paid in a month (as specified in paragraph (a) of this section) falls on a Federal nonworkday, the contributions shall be paid no later than the preceding Federal workday. If the last day for filing any wage report or contribution return falls on a Federal nonworkday, the contribution return or wage report may be filed on the next Federal workday.

* * * * *

2. Effective January 1, 1981, the heading and paragraphs (c)(2) and (c)(5) of § 404.1255a as published on June 28, 1979, at 44 FR 37608, are revised to read as follows:

§ 404.1255a Place and time for filing contribution returns, wage reports, and making deposits of contributions for months on or after January 1, 1981.

* * * * *

(c) *Contribution returns and wage reports*—(1) * * *

(2) *When to be filed.* (For the rules in effect during the period July 1, 1980 through December 31, 1980 see 43 FR 54087, November 20, 1978 and (insert FR citation and date this material is published)).

* * * * *

(5) *Due date is a Federal nonworkday.* If the due date for paying contributions for the wages paid in a month (as specified in paragraph (a) of this section) falls on a Federal nonworkday, the contributions shall be paid, and the contribution return shall be filed, no later than the preceding Federal workday. If the last day for filing any wage report falls on a Federal nonworkday, the wage report may be filed on the next Federal workday.

* * * * *

(Sec. 205, 218, 1102, Social Security Act; 53 Stat. 1368, as amended, 64 Stat. 514 as amended, and 49 Stat. 647, as amended; (42 U.S.C. 405, 418, 1302.))

[FR Doc. 80-33811 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-02-M

Food and Drug Administration

21 CFR Chapter I

[Docket No. 78N-0158]

Mandatory Uniform Effective Date for Food Labeling Regulations; Notice to Manufacturers, Packers, and Distributors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing July 1, 1983 as its new uniform effective date for mandatory compliance with all final FDA food labeling regulations that are published in the **Federal Register** after October 31, 1980.

This notice is not intended to change existing requirements. Therefore, all final FDA food labeling regulations previously published in the **Federal Register** that announced July 1, 1981 as their effective date will still go into effect on that date. Final regulations published in the **Federal Register** with effective dates earlier than July 1, 1981 (e.g., July 1, 1979) are also unaffected by this notice.

FDA periodically has announced uniform effective dates for mandatory compliance with new labeling requirements because the economic impact of requiring individual label changes on separate dates would probably be substantial. In addition, industry needs sufficient lead time to make label changes and the current uniform effective date of July 1, 1981 is less than 1 year away. Therefore, the agency has concluded that a new uniform effective date should be established.

EFFECTIVE DATE: July 1, 1983 for mandatory compliance with food labeling regulations published after October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Bob Lake, Bureau of Foods (HFF–302), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–245–1254.

SUPPLEMENTARY INFORMATION: FDA periodically issues various regulations for packaged food. If these labeling changes were individually required on separate dates, the cumulative economic impact on the food industry of frequent changes would probably be substantial. Therefore, the agency periodically has announced uniform effective dates for mandatory compliance with new food labeling requirements (e.g., the **Federal Register** of September 29, 1978 (43 FR 44830)). Use of a uniform effective date also provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials. The agency believes that this policy serves consumers' interest as well because the increased cost of multiple short term label revisions that would otherwise occur would likely be passed on to consumers in the form of higher food prices.

The agency has decided that a new uniform effective date of July 1, 1983 should be established for future FDA regulations requiring changes in food labels where special circumstances do not justify a different effective date. Action is appropriate now because the current uniform effective date is less than 1 year away. The agency has selected July 1, 1983 to ensure adequate time for implementation of the food labeling regulations FDA is currently planning to propose and finalize in the next couple of years.

Some of the types of regulatory action that FDA plans to take were described in a notice of intent that FDA published in the **Federal Register** of December 21, 1979 (44 FR 75990) in conjunction with the U.S. Department of Agriculture's Food Safety and Quality Service and the Federal Trade Commission's Bureau of Consumer Protection. That notice described the three agencies' tentative positions on a number of food labeling issues. As that notice indicates, FDA is committed to regulatory action designed to provide the consumer with information concerning the ingredients and nutritional qualities of packaged food and to present the information in a uniform and understandable manner. The agency may also publish other food labeling regulations during this period.

The agency recognizes that if they become final rules, some of these regulatory initiatives may have broad application and that some food labels may be affected by a number of changes. Therefore, FDA is selecting a new uniform effective date which is sufficiently far in advance to allow ample time for industry to exhaust existing label inventories and obtain new labeling materials fully complying with new requirements no later than the new date.

The agency encourages industry, however, to comply with new labeling regulations earlier than the required date wherever this is feasible. Thus, when industry members voluntarily change their labels, FDA believes that it is appropriate that they incorporate any new requirements which have been published as final regulations up to that time.

The new mandatory uniform effective date will apply only to final FDA food labeling regulations published after October 31, 1980. Those regulations will specifically identify July 1, 1983 as their effective date for compliance. If any food labeling regulation involves special circumstances that justify an effective date other than July 1, 1983, the agency will determine for that regulation an appropriate effective date that will be specified when the regulation is published.

The current mandatory uniform effective date of July 1, 1981 for new final regulations affecting the labeling of food products was announced in the **Federal Register** of September 29, 1978 (43 FR 44830). Foods initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1981 are still required to comply with any final FDA regulations that identify July 1, 1981 as their effective date for compliance.

Dated: October 24, 1980.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33727 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Parts 73, 81

[Docket No. 80N-0447]

Lead Acetate; Listing As a Color Additive in Cosmetics That Color the Hair on the Scalp

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is permanently listing lead acetate for use as a color additive in cosmetics that color the hair on the scalp. FDA concludes that lead acetate is suitable and safe for that use. This rule also deletes the color additive from the provisional list.

DATES: Written objections by December 1, 1980 effective December 1, 1980. All affected products initially introduced or initially delivered for introduction into interstate commerce on or after December 1, 1981 shall fully comply with this regulation.

ADDRESS: Written objections may be sent to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Color Additive Amendments of 1960 (the Amendments) require FDA premarket clearance of any color additive [1] which is intended to be used or which is represented for use in or on food, drugs, devices, or cosmetics [2] (section 706 of the Amendments (21 U.S.C. 376)).[3] Under the Amendments a

[1] The term "color additive" is defined by section 201(t) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(t)) as follows:

(t)(1) The term "color additive" means a material which—

(A) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source, and

(B) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto;

Except that such term does not include any material which the Secretary, by regulation, determines is used (or intended to be used) solely for a purpose or purposes other than coloring.

(2) The term "color" includes black, white, and intermediate grays.

[2] Hair dyes utilizing lead acetate as a colorant meet the statutory definition of "cosmetic" which is defined by section 201(i) of the act (21 U.S.C. 321(i)) as follows:

(i)(1) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; except that such term shall not include soap.

[3] All functions of the Secretary of the Department of Health and Human Services in administering the act have been delegated to the Commissioner of Food and Drugs (21 CFR 5.1(a)).

color additive may be approved and listed permanently if there are sufficient data establishing that it is safe for its intended use(s).

Section 203(b) of the Transitional Provisions to the Amendments, 21 U.S.C. 376 note (Transitional Provisions), provides that any color additive in commercial use prior to the enactment date of the Amendments (July 12, 1960) shall be deemed provisionally listed pending completion of scientific investigations necessary to determine the safety of the additive in accordance with the Amendments.

Section 81.1 of the color additive regulations (21 CFR 81.1) identifies those color additives that are provisionally listed along with their respective "closing dates." A closing date is the last day upon which a provisionally listed color can be used legally, absent an approval of a color additive petition and its permanent listing. (See section 203(a)(1) of the Transitional Provisions.)

The color additive lead acetate has been provisionally listed since the enactment of the Amendments. During that time, a series of toxicological and absorption studies has been performed. As discussed below, based upon the evaluation of these and other pertinent data, the agency concludes that lead acetate is safe as a hair dye. FDA is therefore permanently listing lead acetate as a color additive in cosmetics used to color hair on the scalp.

II. The Procedural History of Lead Acetate

Lead acetate is a metallic salt color additive which had been used in cosmetic hair dyes before the enactment of the Amendments. Thus, under the Amendments, lead acetate, like other metallic salt colors, and vegetable-based hair colors, was deemed provisionally listed on July 12, 1960.

In the **Federal Register** of December 10, 1963 (28 FR 13374), FDA issued a notice in response to industry petitions in which metallic salt and vegetable color manufacturers were advised that their products were not eligible for the coal-tar hair dye exemption to the premarket clearance requirements of the Amendments [4] and that these colorants were color additives subject to all the requirements of the Amendments. In addition, this notice requested the submission of data with respect to individual colors so that the agency could make determinations whether they should be permanently or provisionally listed color additives. The agency advised that no regulatory action would be taken against the metallic salt and vegetable colorants until that determination was made and notice of their status was published in the **Federal Register.** However, the only data received in response to this notice were submitted in support of a listing petition for the vegetable base color henna, which was thereafter permanently listed for use as a hair color.

A second notice was published in the **Federal Register** of January 31, 1973 (38 FR 2996) stating that only those metallic salts or vegetable colorants for which petitions had been filed by July 30, 1973, could continue to be marketed. Subsequently, a petition was received by FDA from the Committee of the Progressive Hair Dye Industry requesting the listing of lead acetate as a color additive in cosmetic hair dyes. Notice of filing for this petition appeared in the **Federal Register** of June 29, 1973 (38 FR 17260). Lead acetate was specifically added to the codified provisional list, effective January 1, 1974, by a regulation published in the **Federal Register** of March 13, 1974 (39 FR 9657).

The closing date for the provisional listing of lead acetate has been postponed on various occasions pending the performance, completion, and evaluation of toxicological and absorption studies. The **Federal Register** of March 3, 1978 (43 FR 8790) details each postponement up to that time.

By 1978, it was settled scientifically that lead acetate used as a hair dye would present no risk to the public health from the standpoint of classical lead toxicity (lead poisoning) (43 FR 8791; March 3, 1978). However, it had been established conclusively through animal feeding testing in the 1950's and 1960's that lead acetate was an animal carcinogen in two species, the mouse and the rat, *id.* Yet, because the limited human epidemiological data were considered equivocal, a definitive conclusion whether lead was a human carcinogen could not be reached, *id.*

In addition, the scientific evidence did not establish conclusively whether lead acetate hair dyes would be absorbed through the scalp. While previous percutaneous absorption studies of lead acetate indicated that lead acetate is unlikely to be absorbed under test conditions, the data did not demonstrate adequately whether or not systemic absorption occurred (42 FR 62497; December 13, 1977 and 43 FR 8790; March 3, 1978). If the color additive were not absorbed, the carcinogenicity data could be disregarded as not relevant to human exposure, and the applicable anticancer clause in the Amendments, section 706(b)(5)(B), would not become an issue. The petition to permanently list lead acetate could then be considered solely under the general safety provisions of the Amendments, section 706(b)(5)(A) (i) through (iv). To resolve these issues the agency recognized the need for the performance of a definitive absorption study:

> • • • The Commissioner agrees that present scientific evidence does not provide definitive support for a conclusion that lead is a human carcinogen; however, on the basis of the studies that show lead acetate to be a carcinogen in animals, the possibility that lead acetate may be absorbed percutaneously must be explored carefully (43 FR 8791; March 3, 1978).

Because lead is ubiquitous in the environment, the major problem inherent in determining the likelihood of percutaneous absorption of lead is the variable "background" level tht is always present in humans. Humans are exposed to lead from numerous sources, including lead found unavoidably in the food, the water, and the air. As a result of the variation of lead in these sources, human lead intakes have not been precisely defined. However, estimates based on scientific data indicate that lead intake from food sources for adults can range from 100 to 500 micrograms (μg) per day, with an average of approximately 250 μg. Current Environmental Protection Agency water standards allow a calculation of a maximum intake of approximately 100 μg/day for adults. Estimations of daily human lead intake from air sources vary among geographical locations. In the urban setting, estimations of intake range from 20 μg to 400 μg/day, whereas the nonurban areas have an estimated intake of about 2 μg/day. While it now appears that exposure to these sources of lead may be reducible in some instances, it is not possible to totally eliminate lead intake in man. Therefore, with these estimated values for human exposure to lead, it is possible to determine an average daily level of human lead absorption into the blood of approximately 35 μg with the actual amount possibly being higher. These fluctuating lead values represent the "background" (43 FR 8792; March 3, 1978). The scientific data estimating human lead intake are on file in the Dockets Management Branch under the "Lead in Food" docket, 79N–0200.

The question of percutaneous absorption of lead presented difficulties because it required a determination of what level of increase over the "background" must be detectable to

[4] Coal-tar hair dyes labeled with a warning legend advising that their use may cause skin irritation are exempt from the cosmetic adulteration provision of the Act and the premarket clearance requirements of the Amendments. See sections 601(a) and 706(a) of the act (21 U.S.C. 361(a) and 376(a)); *Toilet Goods Association* v. *Finch*, 419 F.2d 21 (2d Cir. 1969).

permit a scientific conclusion that no significant absorption would occur from the use of lead acetate as a hair dye. To determine a level of absorption which, in terms of analytical chemistry methodology, would be considered significant. FDA concluded:

> * * * that any study intended to establish that use of lead acetate as a hair color does not result in significant percutaneous absorption of lead must include a method capable of detecting approximately 1 microgram of absorbed lead above and beyond the normal background (43 FR 8793; March 3, 1978).

Combe, Inc., a member of the Committee of the Progressive Hair Dye Industry, submitted a protocol for a radioactive tracer study as a way of determining absorption of lead in which the problem of the fluctuating "background" could be eliminated. Under this study protocol, the issue of how to determine an increase over normal lead "background" does not arise because there are no endogenous levels of radioactive lead in humans (43 FR 8793; March 3, 1978). The closing date for lead acetate was extended until December 31, 1978, to allow for the completion and evaluation of the radioactive tracer study, *id.*

In the **Federal Register** of January 2, 1979 (44 FR 45), the closing date was further postponed until March 1, 1979, to provide FDA additional time to complete its evaluation of the radioactive tracer absorption study. In the **Federal Register** of March 6, 1979 (44 FR 12205), FDA proposed another postponement. In that notice, the agency announced that it had completed its evaluation of the absorption study and found that a miniscule amount, approximately 0.5 μg per application (½ of one millionth of a gram), was shown to penetrate the skin (Ref. 2). But the issue of whether lead, the toxic component in lead acetate, presented a cancer risk to humans remained unresolved. The agency expected that information bearing on this issue would be submitted in response to its planned advance notice of proposed rulemaking (ANPR) on lead in food. FDA therefore postponed the closing date to March 1, 1980 in the **Federal Register** of August 31, 1979 (44 FR 51233).

The ANPR on lead in food was published in the **Federal Register** of August 31, 1979 (44 FR 51216). The comment period on the ANPR, originally scheduled to close on November 29, was extended to February 29, 1980 (44 FR 67673; November 27; 1979). Accordingly, the closing date for lead acetate was also postponed for 90 days to June 30, 1980 (45 FR 11799; February 22, 1980). The current closing date of October 31, 1980, was established by a regulation published in the **Federal Register** of June 24, 1980 (45 FR 42255).

III. The Legal Standards and Their Applicability to Lead Acetate

Under section 706(b)(4) of the Amendments, a color additive cannot be permanently listed unless the evidence establishes that it is "safe." This is referred to as the "general safety clause" for color additives. In addition to passing muster under the general safety clause, a color additive must also pass the test laid down by the color additive anticancer (Delaney) clause in section 706(b)(5)(B) of the Amendments. The general safety clause will first be discussed as it applies to risks other than carcinogenicity. A discussion of carcinogenicity under the anticancer clause and the general safety clause will follow.

The term "safe" is not defined in the general safety clause, nor is it defined elsewhere in the act. However, the legislative history of the Amendments incorporates by reference the same meaning for the word "safe" that is applicable to food additives under the Food Additives Amendment of 1958. (See H.R. Rept. No. 7624, 86th Cong., 2d Sess., p. 776 (1960).) The legislative history of the Food Additives Amendment of 1958 makes clear that the term "safe" was not intended to require absolute proof of safety. The House Report states:

> * * * Safety requires proof of a *reasonable certainty that no harm will result from the proposed use of an additive.* It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance.
>
> This was emphasized particularly by the scientific panel which testified before the subcommittee. The scientists pointed out that it is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of any chemical substance. (H.R. Rept. No. 2284, 85th Cong., 2d Sess., pp. 4–5 (1958) [Emphasis added].)

Thus, FDA's regulations provide that a color additive is "safe" if "there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." (21 CFR 70.3(i).)

The factors to be considered for determining the safety of a color additive are provided in section 706(b)(5)(A) (i) through (iv) of the Amendments; they include the probable consumption of the color additive, the cumulative effect of the color additives, if any, in the diet of man or animals, the application of safety factors, and the availability of any needed practicable methods of analysis for determining the identity, quality, and purity of the color additive.

FDA has fully reviewed all the scientific data submited in support of the lead acetate petition and the comments germane to the petition received in response to the ANPR on lead in food. On the basis of this review the agency reaffirms its conclusion, previously set forth (44 FR 12206; March 6, 1979), that lead acetate is safe from the standpoint of classical lead toxicity (lead poisoning).

This conclusion is based upon the insignificant increase of lead in normal human blood levels from lead acetate hair dyes. The average person has a steady-state blood level of approximately 17μg of lead per 100 milliliters of blood which is retained out of the 35 μg lead that is absorbed and retained per day from the normal human lead intake of 100 to 500μg from all sources. The increase in the amount of human lead absorption from the use of lead acetate hair dyes would have no discernible effect on this steady-state blood level. The Joint FAO/WHO Expert Committee on Food Additives (Rept. No. 505) (Ref. 4) has established a provisional tolerable weekly intake of lead for adults of 3 milligrams per week, or 428 μg/per day. Moreover, the population exposed to lead in hair dyes is limited to adults who, in terms of susceptibility to lead poisoning, are not a high-risk group as compared to children. Exposure to lead from hair dyes would be limited even among adults because the infrequency of their use is an inherent check on the total individual exposure. Hair dyes thus do not present a potential problem of extremely high use by particular individuals. In sum, the lead poisoning evidence, taken as a whole, shows lead acetate in hair dyes to be safe.

Thus, the only issue now before the agency is whether the petition to permanently list lead acetate for use in hair dyes can be approved in light of the evidence that the substance is an animal carcinogen and is absorbed through the skin. As noted, this evidence must be evaluated under both the anticancer clause and the general safety clause. The anticancer clause will be discussed first.

The color additive Delaney [5] anticancer clause consists of two parts: one is applicable to ingested additives, the other to non-ingested additives. The first section (section 706(b)(5)(B)(i) of the

[5] Like its food additive (section 409(c)(3)(A) of the act) and animal drug (section 512(d)(1)(H) of the act) counterparts, the color additive anticancer clause, is called a "Delaney" clause after its Congressional sponsor, Congressman James J. Delaney.

Amendments) provides that a color additive:

* * * shall be deemed unsafe, and shall not be listed, for any use which will or may result in ingestion of all or part of such additive, if the additive is found by the Secretary to induce cancer when ingested by man or animal, or if it is found by the Secretary, after tests which are appropriate for the evaluation of the safety of additives for use in food, to induce cancer in man or animal.

This provision is limited to uses that will or may result in ingestion; it does not, therefore, apply to the use of lead acetate in hair dyes.

The applicable provision is the second section of the color additive Delaney Clause (section 706(b)(5)(B)(ii) of the Amendments), which states that a color additive:

* * * shall be deemed unsafe, and shall not be listed, for any use which will not result in ingestion of any part of such additive, if, after tests which are appropriate for the evaluation of the safety of additives for such use or after other relevant exposure of man or animal to such additive, it is found by the Secretary to induce cancer in man or animal.

There is a significant difference between these two parts of the color additive Delaney Clause. The first part, the "ingestion clause," like the food additive Delaney Clause, section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), makes an animal ingestion study demonstrating carcinogenicity an absolute bar to the approval of a petition for an ingested color additive. A finding of carcinogenicity alone renders the additive "unsafe" as a matter of law.

The second part, the "non-ingestion clause," does not make an animal ingestion study demonstrating carcinogenicity an absolute bar to the approval of a petiton for a non-ingested color additive.[6] Instead, it requires the agency to make one of two additional findings:

1. That the tests relied upon to conclude that the substance is an animal or human carcinogen are "appropriate for the evaluation of the safety of additives" for the particular use under review; or,

2. That other exposure of man or animal "relevant" to the substance shows it to be a carcinogen.

In other words, by requiring an additional finding as to "appropriateness" or "relevance" of data, Congress distinguished the non-ingestion clause from the ingestion clause. Thus, to interpret the non-ingestion color additive Delaney Clause to mean that a positive animal feeding study is a per se bar to the permanent listing of a non-ingested color additive would eliminate the criteria of "appropriateness" and "relevance" from the statute itself. This would render section 706(b)(5)(B)(ii) of the Amendments indistinguishable from section 706(b)(5)(B)(i). Such a result would clearly ignore the plain words Congress chose in drafting this legislation. See *International Brotherhood of Teamsters* v. *Daniel*, 439 U.S. 551, 558 (1979). Additionally, this interpretation would not be supported by the legislative history.

In testimony on the proposed Color Additive Amendments of 1960 before the House Committee on Interstate and Foreign Commerce, Secretary Flemming of the Department of Health, Education, and Welfare, stated that the Delaney Clause applicable to ingested additives was not the same as the Delaney Clause applicable to external colorants:

The Chairman. * * * [T]hese two bills, the House and Senate bills, are identical, with the exception of page 10 in the House Bill, which has reference to the Delaney Amendment—is that identical with the amendment in the food additive law, except in that respect?

Secretary Flemming. *It is not identical because of colors that are applied to external parts.*

The Chairman. Except as to colors?

Secretary Flemming. This is right—except for the changes that have to be made in order to adapt it to the color situation—except for that, it is identical, so far as the policy issue is concerned. H.R. Rept. No. 7624, 86th Cong., 2d Sess., p. 102 (1960) (Emphasis added).

This is the first instance where the agency must decide the applicability of the Delaney Clause to a non-ingested color additive. Specifically, the agency must decide whether animal feeding studies showing lead to be carcinogenic are "appropriate" or "relevant" for the purpose of applying section 706(b)(5)(B)(ii) to lead acetate hair dyes.

It should be noted that the agency must make an affirmative finding of either "appropriateness" or "relevance" (44 FR 12206; March 6, 1979). In so doing, FDA must make a scientific judgment involving an exercise of discretion not permitted under the more traditional and absolute food additive and ingested color additive Delaney Clauses (see 21 U.S.C. 348(c)(3)(A) and 376(b)(5)(B)(i); 44 FR 12206; March 6, 1979).

As discussed below, after a thorough evaluation of all available scientific evidence relevant to the issue, the agency cannot find that the animal feeding studies are either "appropriate" or "relevant" for making the safety determination for lead acetate hair dyes under section 706(b)(5)(B)(ii) of the Amendments. This conclusion is based upon the unusual combination of scientific facts peculiar to lead acetate in hair dyes, a combination which will rarely, if ever, be presented again in this context.

The required finding of "appropriate" or "relevant" cannot be made here for the following combination of reasons:

1. The Combe, Inc. radioactive tracer skin absorption study (Ref. 2), in attempting to identify whether systemic absorption of lead occurred following the application of the hair dye, demonstrated that on an average only 0.5 μg of lead per application penetrates the skin. Conventional analytical methods could not detect so small an amount of lead. Indeed, the agency believed prior to the performance of the study that absorption would not be considered significant, in an analytical sense, unless found to be greater than 1 μg. On the basis of that study, it is estimated that frequent users of lead acetate hair dyes who might apply the hair dye as often as twice per week, could have an average daily absorption of lead from that source of 0.3 μg ($\frac{3}{10}$ of one millionth of a gram). As stated in Section II above, this compares to an average human absorption of lead from air, food, and water of approximately 35 μg/per day. Thus, the average user of lead acetate hair dye might increase his or her body lead burden by less than 1 percent. Such an increase of absorbed lead from hair dyes over the normal human "background" levels of lead does not augment the existing risk of acute or chronic lead toxicity, including cancer, in any clearly discernible, much less significant, manner.

2. The scientific data submitted to FDA concerning the issue of whether lead is a human carcinogen are not sufficient for substantiating a direct correlation between lead exposure and human carcinogenicity.[7] However, even

[6] Analogously, Congress, in enacting the Animal Drug Amendments of 1968, changed the traditional absolute Delaney language in the food additive anticancer clause. Thus, 21 U.S.C. 360(d)(1)(H) requires that any animal drug that has been shown to cause cancer in man or animal be deemed "unsafe" "*except*" where "no residue" of the drug is found in any edible portion of the animal tissue (emphasis supplied.) Like the "appropriate" and "relevant" language in the non-ingestion color additive Delaney Clause, the "no residue" language in the animal drug Delaney Clause eases the absolute prohibition of the food additive Delaney Clause. FDA has reasoned, in proposing to interpret the language of the animal drug Delaney Clause, that where an animal drug is shown to be carcinogenic, "no residue" should be defined in terms of an amount of residue that would pose a "socially accepted level of risk" of one cancer per million lifetimes. (See FDA proposed rule, "Criteria and Procedures for Evaluating Assays for Carcinogenic Residues," (44 FR 17070; March 20, 1979).)

[7] FDA has previously announced that if the issue of whether lead is or is not a human carcinogen could not be resolved, it would apply its standard cancer risk identification policy (i.e., where there exists systemic absorption of a substance and

Footnotes continued on next page

if a direct correlation could be made, the human cancer risk from the use of lead acetate hair dye would be a clearly insignificant one. In the course of the safety evaluation of this petition, FDA considered risk assessments prepared by FDA staff personnel (Ref. 3) and Dr. Richard Wilson of Harvard University on behalf of Combe, Inc., (Ref. 1). These assessments were performed independently; yet they reached very similar conclusions. Using "worst case" risk estimates extrapolated from the animal toxicity data (i.e., assuming carcinogenicity), the agency calculated that the upper limit of lifetime cancer risk from the use of lead acetate in hair dyes was approximately two in ten million lifetimes. Dr. Wilson's risk assessment calculated that the upper limit lifetime cancer risk from lead acetate in hair dyes was about one in eighteen and one half million lifetimes. The disparity in the upper limit lifetime risk derived by these assessments can be attributed to slight differences in the assumptions underlying each assessment. These very conservative risk assessments support a conclusion that any risk likely to result from use of lead acetate hair dye cannot be considered significant in terms of public health protection.

Having considered the trivial amount of lead absorption in relation to the ever present normal lead "background" in humans and recognizing that, even if a human cancer risk exists from the use of lead acetate hair dyes, such an added risk would be minute, FDA concludes that lead acetate, by any reasonable standard, is safe for use in hair dyes. Because FDA regards this use of lead acetate to be safe, the agency is unable to conclude that the studies showing lead acetate to be an animal carcinogen are "appropriate" or "relevant" for the purpose of applying the non-ingested color additive Delaney Clause.

The reasoning that leads FDA to conclude that lead acetate is safe and that the Delaney Clause cannot be invoked also justifies the conclusion that lead acetate hair dyes satisfy the general safety provisions under section 706(b)(5)(A)(i) through (iv) of the Amendments. On this issue, the petitioner has the burden of proof. *Certified Color Manufacturers Association* v. *Mathews*, 543 F. 2d 284 (D.C. Cir. 1976).

As discussed above, Congress did not intend to require that safety be proved to an absolute certainty, recognizing the limits that exist on society's ability to assure itself of a complete absence of risk. In this context and as discussed above, FDA must consider three factors peculiar to lead acetate: the significant human background exposure to lead; the almost infinitesimally low absorption of lead from lead acetate hair dyes,[8] especially when contrasted to the human background exposure; and the very low potential added risk (in a range between one in five million to one in eighteen million) presented. Based on these factors, FDA concludes that lead acetate hair dyes are safe under the "reasonable certainty of no harm" standard established by Congress.

Advances in the ability of analytical chemists to detect infinitesimally small amounts of substances—such as was seen by the Combe, Inc., radioactive absorption study on lead acetate—are forcing FDA to confront for the first time the significance of potential risks on the order of those associated with lead acetate hair dyes. As discussed in footnote 6, FDA has suggested that an increased risk of cancer of one in one million over the lifetime of the population to be "acceptable" and thus safe by the standard of reasonableness established by Congress. The potential risks from lead acetate are substantially lower than one in one million.

FDA understands that there is a Congressional expectation that the agency will be very conservative in determining whether and to what extent additives should be permitted in the Nation's foods, drugs, devices, and cosmetics. The agency recognizes also that Congress indicated that FDA should be reasonable in applying the Delaney Clause to those additives. (See H.R. Rept. No. 7624, 86th Cong., 2d Sess., pp. 214, 790, and 802–803 (1960).) Under the particular facts present here, FDA believes that approval of the color additive petition for lead acetate hair dyes to be consistent with both its mandate to protect the public health and the standard of reasonableness established by Congress.

Increasingly, the courts too are recognizing the discretion inherent even in the most rigorous public health statutes to disregard potential risks that are so trivial as to present no public health or safety concern. Cf. *Industrial Union Department, AFL–CIO* v. *Marshall*, 48 L.W. 5022, 5037 (July 2, 1980); *Volkswagenwerk, A.G.* v. *Federal Maritime Commission*, 390 U.S. 261, 276–277 (1968); *Alabama Power Company* v. *Costle*, —— *F.2d* —— (D.C. Cir. 1979) No. 78–1006, December 14, 1979); *Monsanto* v. *Kennedy*, 613 F.2d 947, 955 (D.C. Cir. 1979); *United Glass and Ceramic Workers of North America, AFL–CIO* v. *Marshall*, 584 F.2d 398, 407–408 (D.C. Cir. 1978); *District of Columbia* v. *Orleans*, 406 F.2d 957, 959 (D.C. Cir. 1968).

Conclusion

For the reasons discussed in this document, FDA finds the color additive lead acetate to be safe for use in cosmetics that color the hair on the scalp and grants the petition to permanently list lead acetate for that use.

References

The following references, and other relevant material, are on public file in the Dockets Management Branch (address above). They may be seen in that office from 9 a.m. to 4 p.m., Monday through Friday.

1. Wilson, R., "The Carcinogenic Risk of Using Hair Dyes Containing Lead Acetate," Report for Combe, Inc., August 1978, report submitted to FDA, September 1978.

2. Goldberg, A. and M. R. Moore, "Lead Absorption Study for Combe, Incorporated, August 1978," report submitted to FDA, September 1978.

3. "Risk Estimation; Hair Dyes," Food and Drug Administration Subgroup on Lead Acetate Carcinogenicity, September 8, 1980.

4. "Evaluation of Certain Food Additives and the Contaminants Mercury, Lead, Cadmium," World Health Organization Technical Report Series No. 505, FAO Nutrition Meeting Report Series No. 51, April 1972.

With permanent listing, the provisional entry for lead acetate in § 81.1(g) (21 CFR 81.1(g)) will become obsolete. That entry is being deleted from the regulation. Elsewhere in this issue of the **Federal Register**, the agency is extending the current provisional listing for lead acetate to December 31, 1980. This extension is necessary to accommodate the 30-day objection period and the evaluation of any objections submitted in response to this rule.

The agency has determined under 21 CFR 25.24(d)(5) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore,

Footnotes continued from last page
animal feeding studies showing carcinogenic effect, the substance is presumed to present a human cancer risk) and conclude that lead acetate hair dyes present human cancer risk (44 FR 12207; March 6, 1979). However, for all the reasons specified in this document, the agency now concludes the application of that policy to the peculiar scientific facts relative to lead acetate hair dyes is inappropriate.

[8] Absorption of lead acetate can occur in greater amounts through abraded skin. However, hair dyes containing lead acetate are labeled with directions that advise the user that the product should not be used on cut or abraded skin. The agency believes that labeling instructions of this type minimize the likelihood of absorption under actual conditions of use.

neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706(b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376(b), (c), and (d))) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 73 and 81 are amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. Part 73 is amended in Subpart C by adding new § 73.2396 to read as follows:

§ 73.2396 Lead acetate.

(a) *Identity.* The color additive lead acetate is the trihydrate of lead (2+) salt of acetic acid. The color additive has the chemical formula Pb $(OOCCH_3)_2.3H_2O$).

(b) *Specifications.* Lead acetate shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Water-insoluble matter, not more than 0.02 percent.
pH (30 percent solution weight to volume at 25° C), not less than 4.7 and not more than 5.8.
Arsenic (as As), not more than 3 parts per million.
Lead acetate, not less than 99 percent.
Mercury (as Hg), not more than 1 part per million.

(c) *Uses and restrictions.* The color additive lead acetate may be safely used in cosmetics intended for coloring hair on the scalp only, subject to the following restrictions:

(1) The amount of the lead acetate in the cosmetic shall be such that the lead content, calculated as Pb, shall not be in excess of 0.6 percent (weight to volume).

(2) The cosmetic is not to be used for coloring mustaches, eyelashes, eyebrows, or hair on parts of the body other than the scalp.

(d) *Labeling requirements.* (1) The lable of the color additive lead acetate shall conform to the requirements of § 170.25 of this chapter, and bear the following statement or equivalent:

Wash thoroughly if the product comes into contact with the skin.

(2) The lable of the cosmetic containing the color additive lead acetate, in addition to other information required by the act, shall bear the following cautionary statement, conspicuously displayed thereon:

CAUTION: Contains lead acetate. For external use only. Keep this product out of children's reach. Do not use on cut or abraded scalp. If skin irritation develops, discontinue use. Do not use to color mustaches, eyelashes, eyebrows, or hair on parts of the body other than the scalp. Do not get in eyes. Follow instructions carefully and wash hands thoroughly after each use.

(e) *Exemption for certification.* Certification of this color additive for the prescribed use is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

2. Part 81 is amended in § 81.1 *Provisional lists of color additives* in paragraph (g) by deleting the entry "Lead acetate."

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 1, 1980, file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that hearing is held. Four copies of all documents shall be filed and should be identified with the docket number found in brackets in the heading of this regulation. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective December 1, 1980, except as to any provisions that may be stayed by the filing of proper objections. All affected products initially introduced or initially delivered for introduction into interstate commerce on or after December 1, 1981, shall fully comply with this regulation. Notice of the filing of objections or lack thereof will be given by publication in the **Federal Register.**

(Sec. 706(b), (c), (d), 74 Stat. 399–403 (21 U.S.C. 376(b), (c), and (d)); sec. 203, Pub. L. 86–618, 74 Stat. 404–407 (21 U.S.C. 376, note)).

Dated: October 28, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-34056 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 81

[Docket No. 79C-0053]

Postponement of Closing Date for Provisional Listing of Lead Acetate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of lead acetate for use as a color additive in cosmetics that color the hair on the scalp. A new closing date for lead acetate is being established to provide for receipt and evaluation of any objections received in response to the final regulation approving the petition for the permanent listing of lead acetate. The regulation that permanently lists lead acetate is published elsewhere in this issue of the **Federal Register.** The new closing date will be December 31, 1980.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Gerald L. McCowin, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: The current closing date of October 31, 1980, for the provisional listing of lead acetate was established by a regulation published in the **Federal Register** of June 24, 1980 (45 FR 42255). The October 31, 1980, closing date for lead acetate was established to provide time for publication of a regulation in the **Federal Register** regarding the final decision on the petition for the permanent listing of lead acetate.

After the review and evaluation of the data relevant to the color additive petition for lead acetate used in hair dyes, the agency concluded that lead acetate is safe and suitable for that use. Therefore, FDA issued a regulation that permanently lists lead acetate. The listing regulation is published elsewhere in this issue of the **Federal Register.**

The regulation set forth below will postpone the October 31, 1980, closing date for the provisional listing of that color additive until December 31, 1980. This postponement will provide sufficient time for receipt and the evaluation of comments or objections submitted in response to the permanent listing for lead acetate hair dyes.

Because the current closing date expires on October 31, 1980, FDA has concluded that use of a notice and public procedure on this regulation is impracticable. Moreover, good cause exists for issuing this postponement as a final rule, since the agency has previously concluded that lead acetate is safe for its intended use under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of this color additive until December 31, 1980. To prevent any interruption in the provisional listing of lead acetate, and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on October 31, 1980.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act (Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 81 is amended as follows:

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* by revising the closing date for "Lead acetate" in paragraph (g) to read "December 31, 1980."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing of additives,* by revising the closing date for "Lead acetate" in paragraph (b) to read "December 31, 1980."

Effective date. This regulation is effective October 31, 1980.

(Sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note))

Dated: October 28, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-34054 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 201

[Docket No. 78N-0320]

Requirements for Designating Manufacturer's Name on a Drug Product's Label; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: In the final rule setting forth requirements for designating the manufacturer's name on a drug product label, published in the **Federal Register** of April 15, 1980 (45 FR 25760), the phrase "Manufactured for ———— by ————" was inadvertently omitted as a permissible qualifying identification of a product's distributor and manufacturer. This correction adds this phrase to the list of permissible alternatives.

FOR FURTHER INFORMATION CONTACT: Steven H. Unger, Bureau of Drugs (HFD–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5220.

SUPPLEMENTARY INFORMATION: In the preamble to the final rule that amended the requirements for identifying the manufacturer, packer, or distributor on drug product labels, FDA stated (45 FR 25768) that distributors should at their option be permitted to adopt the phrase "Manufactured for ———— by ————". While the preamble stated that the rule has been revised to permit this phrase, the rule was not in fact so revised. Section 201.1(h)(5) is corrected to include this phrase as a permissible alternative and reads as follows:

§ 201.1 Drugs; name and place of business of manufacturer, packer, or distributor.

* * * * *

(h) * * *

* * * * *

(5) If the distributor is named on the label, the name shall be qualified by one of the following phrases: "Manufactured for ————", "Distributed by ————", "Manufactured by ———— for ————", "Manufactured for ———— by ————", "Distributor: ————", "Marketed by ————". The qualifying phrases may be abbreviated.

* * * * *

Dated: October 24, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33947 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 546

Tetracycline Antibiotic Drugs for Animal Use; Chlortetracycline Hydrochloride Tablets; Revocation of Certain Regulations

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The agency is revoking those regulations reflecting approval of a new animal drug application (NADA) providing for use of chlortetracycline oblong tablets with vitamins for the prevention and treatment of bacterial scours in calves. The sponsor, American Cyanamid Co., requested the withdrawal of approval.

EFFECTIVE DATE: November 10, 1980.

FOR FURTHER INFORMATION CONTACT: David Scarr, Bureau of Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register,** approval of NADA 55–026 is withdrawn. This document amends the regulations by deleting that portion which reflects approval of this NADA.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), Part 546 is amended by revising § 546.110d(c)(5) to read as follows:

§ 546.110d Chlortetracycline hydrochloride tablets.

* * * * *

(c) * * *

(5) *Conditions of use.* It is used as chlortetracycline in tablets for oral ingestion by calves as follows:

(i) *Amount.* 25 milligrams per tablet.

(ii) *Indications for use.* Aid in reduction of incidence of bacterial scours.

(iii) *Limitations.* 75 milligrams per animal per day.

* * * * *

Effective date: October 31, 1980.

(Sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e)).)

Dated: October 23, 1980.

Gerald B. Guest,

Acting Director for Veterinary Medicine.

[FR Doc. 80-33950 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1977

Walkaround Pay

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Deletion of regulation.

SUMMARY: The OSHA walkaround pay regulation, 29 CFR 1977.21, requires employers to pay employees for the time during which they accompany OSHA compliance officers during inspections or engage in related activities. That regulation is hereby deleted in light of the decision of the U.S. Court of Appeals for the District of Columbia Circuit in "Chamber of Commerce of the United States of America v. OSHA," in which the court ordered that the regulation be vacated due to the agency's failure in promulgating the regulation to comply with the rule making procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553. The agency is issuing a proposal to require walkaround compensation shortly.

EFFECTIVE DATE: October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Lerner, Division of Occupational Safety and Health, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue N.W., Room S–4004, Washington, D.C. 20210 (Telephone No. 202–523–6569).

SUPPLEMENTARY INFORMATION: On September 20, 1977 the Assistant Secretary of Labor for Occupational Safety and Health promulgated "an interpretive rule and general statement of policy," declaring that an employer's failure to compensate employees for time spent participating in a walkaround inspection conducted pursuant to section 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) (hereinafter "the Act") constitutes discrimination under section 11(c) of the Act (29 U.S.C. 660) (42 FR 47344, 47345). Section 8(e) of the Act provides that, subject to the regulations issued by the Secretary of Labor, a representative of the employer and a representative authorized by employees have the right to accompany an Occupational Safety and Health Administration (OSHA) inspector during the physical inspection of any workplace under section 8(e) of the Act. Section 11(c)(1) of the Act proscribes any discriminatory action against an employee because the employee, *inter alia*, has exercised on behalf of himself or others any right afforded by the Act. The regulation, codified at 29 CFR 1977.21, provided that in order to assure the unimpeded flow of information to OSHA inspectors, as well as the statutory right of employees to participate in walkaround inspections, an employer's failure to pay employees for time spent in such inspections was discriminatory under section 11(c).

On October 25, 1977, the Chamber of Commerce of the United States of America ("Chamber") filed an action in the United States District Court for the District of Columbia challenging the validity of the walkaround pay provision. The district court upheld the validity of the regulation and the Chamber appealed. On July 10, 1980, the United States Court of Appeals for the District of Columbia Circuit reversed the judgment of the district court and remanded the case to the district court with instructions to vacate the walkaround pay regulation and to conduct any further proceedings not inconsistent with the opinion that it deemed necessary. "Chamber of Commerce of the United States of America v. OSHA," —— F.2d ——, Docket No. 78–2221 (D.C. Cir. July 10, 1980). The court held that since "the Act neither prohibits nor compels pay for walkaround time * * *" the walkaround pay provision was not an interpretive rule; rather, it was a legislative rule, which may only be promulgated in accordance with the notice-and-comment procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553. Because OSHA failed to comply with those procedures in promulgating the rule, the court concluded that the rule must be vacated. On August 14, 1980, the district court vacated the rule and dismissed the case.

After due consideration of the court of appeals decision in "Chamber," OSHA has decided to delete its walkaround pay regulation at 29 CFR 1977.21 (1977) and will not pursue any enforcement actions based on a *per se* theory of discrimination to require employers to compensate employees for time spent in walkaround inspections unless it has first promulgated a walkaround compensation regulation using the notice-and-comment procedures of 5 U.S.C. 553. The agency is publishing a proposed regulation dealing with the issue of walkaround pay shortly.

I find that the reasons stated above constitute good cause for making this deletion of 29 CFR 1977.21 (1977) effective October 23, 1980. This amendment, therefore, is effective October 23, 1980.

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

§ 1977.21 [Removed]

Accordingly, pursuant to sections 8(e) and 8(g)(2) of the Occupational Safety and Health Act of 1970 (84 Stat. 1600, 29 U.S.C. 657(e) and (g)(2), 5 U.S.C. 553, and Secretary of Labor's Order No. 8–76 (41 FR 25059), Part 1977 of Title 29, Code of Federal Regulations is hereby amended by removing § 1977.21 (1977).

(Secs. 8(e) and (g)(2), 11(c); 84 Stat. 1600 (2900 U.S.C. 657(e) and (g)(2), 660(c)); 5 U.S.C. 553; Secretary of Labor's Order 8–76 (41 FR 25059))

Signed at Washington, D.C. this 23rd day of October, 1980.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 80–34031 Filed 10–30–80; 8:45 am]

BILLING CODE 4510–26–M

SELECTIVE SERVICE SYSTEM

32 CFR Part 1690

Determination of Availability of Members of the Standby Reserve of the Armed Forces for Order to Active Duty; Revocation

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: The Selective Service System amends its regulations by revoking 32 CFR Part 1690. Section 6, Public Law 96–357, approved September 24, 1980, repealed the provision of 10 U.S.C. 672(a) that required the Director of Selective Service to determine the availability of a member of the Standby Reserve of the Armed Forces for active duty. 32 CFR Part 1690 has no legal basis, therefore, Part 1690 Determination of Availability of Members of the Standby Reserve of the Armed Forces for Order to Active Duty is revoked.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, 600 E Street, N.W., Washington, D.C. 20435 whose telephone number is (202) 724–0895.

PART 1690 [REVOKED]

32 CFR Part 1690 is revoked.

Bernard Rostker,

Director of Selective Service.

October 27, 1980.

[FR Doc. 80–34042 Filed 10–30–80; 8:45 am]

BILLING CODE 8015–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL 1647–1]

Approval and Promulgation Implementation Plans: Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA announces today final rulemaking on revisions to the New Source Review (NSR) portion of the Ohio State Implementation Plan (SIP). A notice of proposed rulemaking on these revisions was published in the August 26, 1980 **Federal Register** (45 FR 56845). In that notice, USEPA proposed to conditionally approve these revisions provided that, within a specified time period, the State correct specific deficiencies. Based on USEPA's review of the State's response, and the public comments received, USEPA is today conditionally approving the NSR SIP revision submitted by Ohio on July 29, 1980.

EFFECTIVE DATE: This final rulemaking becomes effective on October 23, 1980.

ADDRESSES: Copies of the SIP revision, and public comments on the notice of proposed rulemaking are available for inspection at the following addresses:

U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Richard J. Clarizio, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act, USEPA designated certain areas as not meeting the National Ambient Air Quality Standards (NAAQS) for total suspended particulates, sulfur dioxide, carbon monoxide, photochemical oxidants, and nitrogen dioxide. Part D of the Clean Air Act (Act), added in 1977, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for those areas designated as not meeting the NAAQS.

In order to satisfy the new source review requirements of the Act, the State submitted to USEPA on July 29, 1980, a revision to its SIP. On August 26, 1980, USEPA proposed to conditionally approve this SIP revision.

USEPA's criteria for an approvable Part D SIP are summarized in a **Federal Register** notice published on April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

A discussion of conditional approval and its practical effect appears in the July 2, 1979 **Federal Register** (44 FR 38583). A conditional approval requires the State to submit additional materials by the specified deadlines. USEPA will follow the procedures described below when determining if the requirements of conditional approval have been met.

1. When a State submits the required additional documentation, USEPA will publish a notice in the **Federal Register** announcing receipt and availability of the submission and that the conditional approval is continuing pending USEPA's final action on the submission.

2. USEPA will evaluate the State's submission and public comments on the submission to determine if the deficiencies have been fully corrected. After review is complete, a **Federal Register** notice will either fully approve the plan if all conditions have been met, or withdraw the conditional approval and disapprove the plan. If the plan is disapproved, the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the State fails to submit the required materials according to the negotiated schedule, USEPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved, and the Section 110(a)(2)(I) restrictions on growth are in effect.

In the August 26, 1980 **Federal Register** USEPA proposed to approve the NSR SIP revision provided the State submit or commit to submit within a specified time period the following: (1) A description of the interim procedures which it will follow to satisfy the requirements of Section 172(b)(11) of the Act; (2) a commitment which assures that each permit it issues satisfies the requirements of section 173 of the Act; and (3) revised regulations which refine the criteria used by the Director to issue new source permits under section 173 of the Act.

Summarized below are: (1) A discussion of the conditions for approval cited in the August 26, 1980 Notice of Proposed Rulemaking (45 FR 56845) (2) the State's response to these conditions; and (3) USEPA's evaluation of the adequacy of the State's response.

Alternative Analysis Procedures

In the August 25, 1980 **Federal Register**, USEPA indicated that the July 29, 1980 submission did not contain a description of the interim procedures the State will follow to satisfy the requirements of Section 172(b)(11)(A) of the Act. This section requires an analysis of alternate sites, sizes, production processes and environmental control techniques for those hydrocarbon and carbon monoxide sources proposing to locate in an ozone or carbon monoxide nonattainment area which has been granted additional time to demonstrate attainment of either NAAQS.

State Response

For those areas in the State which are required to comply with Section 172(b)(11)(A) of the Act the following procedure will be utilized. The affected proposed major new facility will be required to submit alternative site data for a minimum of two locations to the regional planning agency for comments and to the Ohio EPA for review. In addition to the alternative sites, the facility will provide an analysis of alternative sizes, production processes and control techniques which demonstrates that the benefits of the construction or modification of the facility outweigh the environmental and social costs imposed. The regional planning agency will review the facility's application taking into account air quality considerations. The final decision of the permit will be made by the Ohio EPA after consideration of the complete application and any comments provided by the regional planning agency.

USEPA Evaluation

USEPA has reviewed the procedures which the State will follow to satisfy the requirements of Section 172(b)(11)(A) of the Act. USEPA has determined that they are adequate as long as these procedures are followed for each hydrocarbon and carbon monoxide source proposing to locate in an ozone or carbon monoxide nonattainment area which has been granted additional time to demonstrate attainment of either NAAQS.

Permit Issuance

In the August 26, 1980 **Federal Register**, USEPA requested that the State assure it that each permit which is issued under the authority of the interim procedures satisfies the requirements of Section 173 of the Act.

State Response

In its September 25, 1980 letter, the State committed to comply with applicable law and the requirements of Section 173 of the Act before issuing a permit.

USEPA Evaluation

USEPA has reviewed this commitment and has determined that as long as each permit issued by the State satisfies the requirements of Section 173 of the Act, the State will be meeting the condition noted in the August 26, 1980 **Federal Register.**

Submission of Revised Regulations

In the August 26, 1980 **Federal Register,** USEPA stated that revisions to the State regulations are necessary to specifically define how the NSR program is to be conducted and what is required of the permit applicant and the Director of the Ohio EPA before the permit is issued to a new or modified source wishing to locate within a designated nonattainment area.

In the July 29, 1980 submission, the Governor of Ohio committed to submit such regulations by October 1, 1981. Therefore, USEPA proposed to approve Ohio's NSR SIP revision on the condition that the State submit, after the completion of State rulemaking procedures, but no later than October 1, 1981, revised regulations which refine the criteria used by the Director to issue new source permits under Section 173 of the Clean Air Act.

State Response

In its September 25, 1980 letter, the State reaffirmed this commitment to submit revised regulations by October 1, 1981.

USEPA Evaluation

As stated in the August 25, 1980 **Federal Register,** USEPA believes that this commitment and schedule to submit the revised regulations are acceptable. It should be noted, however, that pursuant to the August 7, 1980 **Federal Register** (45 FR 52676) USEPA must have approved by November 7, 1981, the State's revisions to the NSR regulations, which reflect the changes required by that **Federal Register.** Failure to have such revised regulations by this date will necessitate imposition of the construction ban.

Summarized below are: (1) The significant issues raised by public commentors, (2) USEPA's response to these issues, and (3) USEPA's final rulemaking.

Public Comment

One commentor submitted extensive national comments and requested that the comments be considered part of the record for each State plan.

USEPA Response

Some of the issues are not relevant to provisions in Ohio's submission USEPA notified the public of its response to these comments in the February 21, 1980 **Federal Register** (45 FR 11472).

Public Comment

One commentor, a representative of a public interest group, presented two objections to USEPA's proposed conditional approval of the NSR SIP revision. The commentor first objected to the general use of the conditional approval mechanism and then to the specific use of it in this case.

To support the first objection, the commentor contends that there is no statutory basis for conditionally approving a SIP revision; and that the Administrator only has authority to "approve or disapprove." The commentor further states that conditional approval negates the intent of the growth and funding restrictions of sections 110(a)(2)(I), 176(a) and 316 of the Act.

Not conceding the first objection, the commentor further maintains that even if USEPA has the authority to conditionally approve, the USEPA should not conditionally approve Ohio's NSR SIP revision. The commentor claims that conditional approval is inappropriate since the deficiencies in this SIP revision are not minor. In particular, the commentor states that there are major deficiencies in OAC Section 3745–31 and in the reasonable further progress portion of the NSR SIP revision. The commentor also states that the reasonable further progress portion is deficient because it is not in final form.

USEPA Response

In response to the commentor's first objection, USEPA believes that where a SIP substantially complies with the requirements of Section 172(b), USEPA has inherent authority to approve a SIP on the condition that the State corrects the remaining, relatively minor, deficiencies in a short period of time. The only available alternative would be to disapprove the SIP and thus invoke the construction moratorium. In addition, conditional approval is consistent with Section 110(c)(1)(C). That subsection requires the Administrator to promulgate regulations for a state if "the state fails, within 60 days after notification by the Administrator or such later period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H)." When the Administrator grants conditional approval, he is essentially notifying the State that further revisions are required to make the Plan or regulations fully approvable. If the State fails to satisfy the Administrator's conditions, the Administrator will disapprove the plan or regulations and may then promulgate regulations to correct the deficiency. The State is simply offered the option of correcting the inadequacies itself.

Contrary to the commentor's claim, the construction moratorium was designed by Congress to protect air quality when the State lacks a plan that adequately assures attainment and maintenance of the ambient standards. That purpose would not be served when the State plan substantially assures attainment and when the remaining deficiencies will be prompty corrected. Moreover, USEPA is precluded from imposing funding restrictions under Section 176(a) under these circumstances, since the State clearly would have made "reasonable efforts" to submit an approvable Part D SIP.

USEPA responds to the commentor's objection to its conditional approval of the NSR SIP revision in the following manner. The commentor claims that there are major deficiencies in OAC Section 3745–31 and in the reasonable further progress (RFP) portion of the NSR SIP revision. The commentor contends that based on these deficiencies USEPA should change its proposed conditional approval to a disapproval.

OAC Section 3745–31 was submitted as part of the NSR SIP revision. It stipulates that the requirements must be satisfied when the Ohio EPA issues an installation permit to a new or modified source of air pollution. USEPA cannot change its proposed conditional approval to a disapproval without sufficient justification for such a change. The commentor has failed to specify the alleged deficiencies in OAC 3745–31, and therefore has not provided USEPA with adequate justification for the disapproval of this SIP revision.

The commentor also claims that the RFP portion of the NSR SIP revision contains a major deficiency. The commentor claims that it is deficient because it is not in final form. USEPA believes that the RFP portion of the NSR SIP revision is acceptable. The RFP portion of the NSR SIP revision, as submitted by the State on July 29, 1980, contains a description of the program which the State is using, and will continue to use, to ensure that emissions from any proposed source in a designated nonattainment area will not interfere with that area's ability to attain the applicable NAAQS by the date imposed by the Act. This approach as described by Ohio meets USEPA requirements.

USEPA Final Determination

USEPA has reviewed the comments received on its proposed conditional approval of the NSR SIP revision and has determined that none of the issues raised provide a sufficient justification for USEPA to change its proposed action. Furthermore, USEPA has reviewed the State's response and has determined that the State adequately commits itself to satisfy these three conditions. USEPA, therefore, approves the NSR SIP revision submitted by the State on July 29, 1980, provided that the State submit to USEPA after the completion of the State rulemaking procedures, but in no event later than October 1, 1981, revised regulations which refine the criteria used by the Director to issue new source permits under section 173 of the Clean Air Act.

USEPA has determined that good cause exists for making this final rulemaking immediately effective. By making this final rulemaking immediately effective, some of the restrictions on industrial growth contained in section 110(a)(2)(I) of the Act could be lifted from the State of Ohio if all other requirements are met. These restrictions are imposed for a failure to have a State Implementation Plan which meets the requirements of Part D after the final date for SIP approval specified in the Act. USEPA has determined that major portions of the revisions to the Ohio NSR SIP meet the requirements of Part D. Final action approving these revisions would satisfy many of the requirements of a Part D SIP. Until the State has a fully approved or conditionally approved Part D SIP, it is subject to the new source prohibitions of section 110(a)(2)(I) of the Clean Air Act.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant," and therefore subject to certain procedural requirements of the Order, or whether it may follow other specialized development procedures. USEPA labels these other regulations, "specialized." I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979, by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirments of Executive Order 12044.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of the date of publication. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This Notice of Final Rulemaking is issued under the authority of section 110(a), 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410(a), 7502, 7601(a).

Dated: October 23, 1980.

Douglas Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the **Federal Register** on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

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

(1) Section 52.1870(c) is amended by adding subparagraph (24) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(24) On July 25, 1980 the State of Ohio submitted its Part D revision to the New Source Review portion of the State Implementation Plan. On September 25, 1980 the State submitted a response to the August 26, 1980 **Federal Register** notice of proposed rulemaking. The response contained information which corrects certain deficiencies and commits to correct by a specified date other deficiencies.

(2) Section 52.1987 is amended by revoking paragraphs (a) and (b) pursuant to section 110(a)(5)(A) of the Clean Air Act (42 U.S.C. 7410), by reserving these paragraphs and by adding paragraph (e) to read as follows:

§ 52.1987 Review of new sources and modifications.

* * * * *

(e) Part D—Conditional Approval—The Ohio New Source Review State Implementation Plan revision for designated nonattainment areas is approved provided that: (1) The State submits by October 1, 1981, revised regulations which have completed State rulemaking procedures and which refine the criteria used by the Director to issue new source permits under section 173 of the Clean Air Act, and (2) each permit issued by the State satisfies the requirements of sections 173 and 172(b)(11) of the Act.

[FR Doc. 80-33874 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-5-FRL 1647-2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) announces today final rulemaking on revisions to the carbon monoxide and ozone portions of the Ohio State Implementation Plan (SIP). The State submitted these revisions to USEPA to satisfy the requirements of Part D of the Clean Air Act (Act). USEPA published a notice of availability (NOA) in the November 2, 1979 **Federal Register** (44 FR 63114). A notice of proposed rulemaking (NPR) on these revisions appeared in the March 10, 1980 (45 FR 15192) **Federal Register.** A notice correcting mistakes in the March 10, 1980 **Federal Register** was published in the April 4, 1980 **Federal Register** (45 FR 22987). The March 10, 1980 **Federal Register** described the nature of the SIP revisions, discussed provisions which in USEPA's judgment did not comply with the requirements of the Clean Air Act (Act) and requested comments from the State and the public. Subsequent to publication of this notice, the State of Ohio submitted additional information for inclusion in the SIP. This information was intended to satisfy the deficiencies identified in the NPRs. Additionally, numerous public comments were received during the public comment period.

Based on its review of the State's response and the public comments, USEPA is today approving, conditionally approving and disapproving specific portions of the Ohio submittal as revisions to the federally approved Ohio State Implementation Plan.

EFFECTIVE DATE: This final rulemaking becomes effective on October 23, 1980.

ADDRESSES: Copies of the SIP revision, public comments on the NPR, and USEPA's evaluation and response to comments are available for inspection at the following addresses:

U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, 401 M Street SW., Washington, D.C. 20460

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460
The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:
Mr. Richard Clarizio, Air Programs Branch, Regulatory Analysis Section, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act), as amended in 1977, USEPA designated certain areas in Ohio as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO), and ozone (03).

Part D of the Act, which was added by the 1977 Amendments, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary standard as expeditiously as practicable, but not later than December 31, 1982. In certain circumstances an extension is provided to no later than December 31, 1987 for ozone and/or carbon monoxide.

The requirements for an approvable SIP are described in a **Federal Register** notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

An adequate State Implementation Plan for ozone requires sufficient controls on the emission of volatile organic compounds (VOC) from stationary and mobile sources to provide for the attainment of the standard by December 31, 1982. Except for the Steubenville area, the State of Ohio has relied exclusively on mobile source controls to provide for attainment of the carbon monoxide NAAQS. In cases where attainment of either the ozone or carbon monoxide NAAQS cannot be demonstrated by 1982, despite application of all reasonably available control measures, extensions of the attainment date may be granted to December 31, 1987. Pursuant to section 172(b)(11) of the Act, a SIP which provides for attainment of the ozone and/or carbon monoxide standard after December 31, 1982 must contain a specific schedule for the implementation of a vehicle emissions inspection and maintenance program (I/M) and establish a program which requires an analysis of alternative sites and locations prior to the issuance of any permit for construction or modification of a major VOC or carbon monoxide emitting facility in the nonattainment area.

On July 27, 1979 and September 13, 1979 the State of Ohio submitted revisions to its SIP for the pollutants carbon monoxide and ozone. Amendments to the submittals were transmitted by the State in December of 1979 and January of 1980. The July 27, 1979 submittal consisted of transportation control plans, and attainment and reasonable further progress (RFP) demonstrations for each of the following urban carbon monoxide and/or ozone nonattainment areas: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Steubenville and Toledo. Revisions to the SIP for the Youngstown urban area were submitted separately. Final action on the Youngstown plan and for the rural ozone nonattainment areas is discussed in a separate notice appearing in today's **Federal Register.**

The transportation control plans (TCP) contain specific measures designed to reduce both carbon monoxide and hydrocarbon emissions from mobile sources. Some of the programs considered for implementation in the TCP are: Traffic flow improvements, transit improvements and vehicle inspection and maintenance (I/M) programs.

Along with the TCP, the State submitted attainment demonstrations for both pollutants (where necessary), for each of the urban areas. These attainment demonstrations contained inventories of the carbon monoxide and/or volatile organic compound (VOC) emissions occurring in the base year. Based on the base year emissions and on anticipated emission reductions due to the implementation of the proposed mobile and stationary source controls, an estimate was made of the effectiveness of the plan and the ability of the area to demonstrate attainment of the NAAQS for ozone and carbon monoxide by December 31, 1982.

For the urban areas of Cincinnati and Cleveland, attainment of the carbon monoxide and ozone NAAQS was not demonstrated by December 31, 1982. Therefore, the State requested an extension, and pursuant to the requirements of section 172 of the Clean Air Act (Act) submitted a vehicle I/M program.

The September 13, 1979 submittal contained revisions to Chapter 3745–21 of the Ohio Administrative Code (Chapter 3745–21). Chapter 3745–21 contains the State's regulations for controlling VOC and carbon monoxide emissions from stationary sources.

USEPA evaluated the transportation control plans and the attainment demonstrations using the requirements for an approvable nonattainment area SIP which appeared in the April 4, 1979 **Federal Register** (44 FR 20372), the "USEPA–USDOT Guidelines for Air-Quality Transportation Plans" and the Office of Transportation and Land Use Policy "Checklist for Transportation SIPs." USEPA evaluated the vehicle I/M program and the regulations controlling VOC and carbon monoxide emissions from stationary sources using the guidance materials referred to in the General Preamble for Proposed Rulemaking (44 FR 23072) and its supplements.

USEPA in the November 2, 1979 **Federal Register** (44 FR 63114) published a notice announcing receipt of the Ohio submittal. On March 10, 1980 (45 FR 15192) USEPA published a NPR with a notice of correction (NOC) published on April 4, 1979 (45 FR 22987). The NPR described the nature of the SIP revisions and specified portions of the SIP submittal which in USEPA's judgment did not comply with the requirements of the Act and needed either clarification or correction by the State.

Initially, a thirty day comment period was provided, until April 9, 1980. Upon request, this comment period was extended approximately two weeks until April 24, 1980 (45 FR 27787). Numerous individuals submitted comments on the Ohio submittal and on USEPA's proposed rulemaking action. The State of Ohio submitted comments, commitments and corrective information to USEPA on the following dates: April 7, 1980, April 15, 1980, April 24, 1980, April 28, 1980, May 27, 1980, July 23, 1980 and August 6, 1980. Significant comments and USEPA's response to them are discussed below.

In this **Federal Register** notice, public comments are addressed in two parts: (1) General comments on the Ohio SIP and on the criteria used by USEPA to evaluate all SIPs and (2) comments on specific portions of the Ohio submittal and/or on USEPA's evaluation of specific portions of the submittal. Comments from the second category will be discussed in one of the following three sections of this notice: (a) Transportation control plans (TCP) and attainment and reasonable further progress (RFP) demonstrations, (b) vehicle inspection and maintenance (I/M); or (c) control of Volatile Organic Compound (VOC) and carbon monoxide emissions from stationary sources. Each of these sections of the notice briefly identifies the deficiencies cited in the

NPR, discusses both the State's response and the response of other commentators, and contain USEPA's response to comments and its final determination on the particular revisions.

USEPA's final determinations take one of three forms: approval, conditional approval, or disapproval. A discussion of conditional approval and its practical effect appears in the July 2, 1979 **Federal Register** (44 FR 38583). A conditional approval requires the State to submit additional materials by the specified deadlines negotiated between the State and the USEPA Regional Office. Schedules submitted by Ohio will be proposed for public comment elsewhere in this **Federal Register**. Although public comment is solicited on the deadlines, and the deadlines may be changed in light of the comments, the State remains bound by its commitment to meet the proposed deadlines, unless they are changed. USEPA will follow the procedures described below when determining if requirements of conditional approval have been met.

1. When the State submits the required additional documentation, USEPA will publish a notice in the **Federal Register** announcing receipt and availability of the submission and that the conditional approval is continuing pending USEPA's final action on the submission.

2. USEPA will evaluate the State's submission and public comment on the submission to determine if noted deficiencies have been fully corrected. After review is complete, a **Federal Register** notice will either fully approve the plan if all conditions have been met, or withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the State fails to submit the required materials according to the negotiated schedule, USEPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved, and the Section 110(a)(2)(I) restrictions on growth are in effect.

The following chart summarizes the actions taken by USEPA today on the Ohio submittal:

I. Approval

(a) Transportation Control Plan for the following areas:
(i) Akron (ozone component)
(ii) Canton
(iii) Cincinnati*
(iv) Columbus
(v) Dayton
(vi) Steubenville
(vii) Toledo (ozone component)
(viii) Cleveland*
(b) Carbon Monoxide Attainment Demonstrations for the following areas:
(i) Cincinnati*
(ii) Cleveland*
(iii) Columbus
(c) Carbon Monoxide RFP Demonstration for the following areas:
(i) Cincinnati*
(ii) Cleveland*
(iii) Columbus
(d) Ozone Attainment Demonstration for the following areas:
(i) Akron
(ii) Cincinnati*
(iii) Dayton
(iv) Toledo
(e) Ozone RFP Demonstration for the following areas:
(i) Akron
(ii) Canton
(iii) Cincinnati*
(iv) Cleveland*
(v) Columbus
(vi) Dayton
(vii) Toledo
(f) The following portions of Chapter 3745–21 (Control of VOC and carbon monoxide emissions from stationary sources) of the Ohio Administrative Code:
(i) Rule 01—Definitions
(ii) Rule 02—Ambient Air Quality Standards and Guidelines
(iii) Rule 03—Methods of Ambient Air Quality Measurement
(iv) Rule 04—Attainment Dates and Compliance Time Schedules—except for the compliance schedule contained in paragraph (C)(18) as it applies to sources covered by old rule 3745–21–04(C)(1)
(v) Rule 05—Nondegradation Policy
(vi) Rule 06—Classification of Regions
(vii) Rule 07—Control of Emissions of Organic Materials from Stationary Sources
(viii) Rule 08—Control of Carbon Monoxide Emissions from Stationary Sources
(ix) Rule 09—Control of Organic Compounds from Stationary Sources—except for paragraphs (M)(2) and (R).
(x) Rule 10—Compliance Test Methods and Procedures.

2. Conditional Approval

(a) Carbon Monoxide Attainment Demonstration for:
(i) Dayton
(ii) Steubenville
(b) Carbon Monoxide RFP Demonstration for the following areas:
(i) Dayton
(ii) Steubenville
(c) Ozone Attainment Demonstration for the following areas:
(i) Canton
(ii) Cleveland [1]
(iii) Columbus
(d) Paragraph (M)(2) and (R) of rule 09 of Chapter 3745–21 of the Ohio Administrative Code (hereinafter referred to as Chapter 3745–21).

3. Disapproval

(a) Compliance schedule in paragraph (C)(18) of new rule 04 of Chapter 3745–21 as it applies to sources covered by old rule 3745–21–04(C)(1).

4. No Action Taken [2]

(a) Carbon Monoxide Attainment and RFP Demonstrations for the following areas:
(i) Akron
(ii) Toledo
(b) Vehicle Inspection and Maintenance (I/M)

5. No Action Required

(a) Carbon Monoxide Attainment Demonstration and RFP Demonstration for:
(i) Canton
(b) Ozone Attainment Demonstration and RFP Demonstration for:
(i) Steubenville

I. National and General Comments on the Ohio SIP and USEPA Response

Comment: One commentator, a local environmental group, stated that USEPA lacked statutory authority to conditionally approve the Ohio SIP. The commentator further argued that conditional approval "negates the punitive weight" of the growth and funding restrictions of sections 110(a)(2)(I), 176(a) and 316 of the Act, 42 U.S.C. 7410 (a)(2)(I), 7506(a), 7616. The

[1] The plans submitted for these areas do not predict attainment of the carbon monoxide and/or ozone NAAQS by 1982. Therefore, to have a fully approvable nonattainment area plan for these areas the State must satisfy the requirements of sections 172(b)(11) (A), (B) and (C).

[2] The Akron, Toledo and I/M portions of this notice contain a discussion of the effects of the growth restrictions imposed by section 110(a)(2)(I) of the Act, as a result of this action.

USEPA has determined that good cause exists for making these revisions immediately effective. By making this final rulemaking immediately effective, the restrictions on industrial growth contained in section 110(a)(2)(I) of the Act could be lifted in some areas of the State of Ohio if all other requirements are met. These restrictions are imposed for a failure to have a State Implementation Plan which meets the requirements of Part D after the final date for SIP approval specified in the Act. USEPA has determined that for several areas in the State, the Ohio carbon monoxide and ozone State implementation Plan revisions meet the requirements of Part D. Therefore, it would be contrary to the public interest to continue for thirty days after the publication of this notice the restrictions on industrial growth for certain sources located within or desiring to locate within these carbon monoxide and/or ozone nonattainment areas.

commentator also asserted that by alerting the public of its conditional approval policy only on November 23, 1979, USEPA arrived at this policy after the fact and merely as a means of political and administrative convenience.

USEPA Response: USEPA first announced its conditional approval policy on July 2, 1979, 44 FR 38583. On November 23, 1979, 44 FR 67182, USEPA announced the procedures it would follow for conditional approvals. In those publications, USEPA set out its position on conditional approval. In brief, USEPA believes that where a SIP substantially complies with the requirements of Section 172(b), USEPA has inherent authority to approve a SIP on the condition that the State corrects the remaining relatively minor deficiencies in a short period of time. The only available alternative would be to disapprove the SIP and thus invoke the construction moratorium. Contrary to the commentator's claim, the construction moratorium was designed by Congress to protect air quality when the state lacks a plan that adequately assures attainment and maintenance of ambient standards. That purpose would not be served when the State plan substantially assures attainment and when the remaining deficiencies will be promptly corrected. Moreover, USEPA is precluded from imposing funding restrictions under Section 176(a) under these circumstances, since the State clearly would have made "reasonable efforts" to submit an approvable Part D SIP. USEPA therefore interprets the Act to permit a conditional approval under these circumstances. In addition, conditional approval is consistent with Section 110(c)(1)(C). That subsection requires the Administrator to promulgate regulations for a state if "the state fails, within 60 days after notification by the Administrator or such later period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H)." When the Administrator grants conditional approval, he is essentially notifying the State that further revisions are required to make the plan or regulations fully approvable. If the State fails to satisfy the Administrator's conditions, the Administrator will disapprove the plan or regulations and may then promulgate regulations to correct the deficiency. The State is simply offered the option of correcting the inadequacies itself.

Finally, the commentator is incorrect in maintaining that USEPA's conditional approval policy contradicts its notices of September 17, 1979 (44 FR 53761) and April 4, 1979 (44 FR 20372). The quoted parts of those notices referred to different issues than those raised by conditional approvals, since they concerned the final approvability of the SIP. Moreover, USEPA clearly stated its conditional approval policy on July 2, 1979 and November 23, 1979, in a manner designated to harmonize with the other **Federal Register** notices setting out USEPA's guidance for approving Part D SIPs.

Comment: The same environmental group submitted comments on the adequacy of the techniques utilized in demonstrating attainment in the urban areas and on the adequacy of the procedures utilized by the State when they adopted their standards.

In reference to the last point, the commentator believes that adoption of SIP elements one at at time, with separate, noncumulative comment period prevented the public's ability to utilize a holistic approach to critique the overall control strategy. In reference to the attainment demonstrations, the commentator contends that the Ohio EPA failed to provide the local planning agencies with updated emissions inventories and failed to submit a current emissions inventory with the July 27, 1979 submittal. Furthermore, the commentator objects to using the 1975 emissions inventory as the base year for formulating the SIP. Finally, the commentator strongly objected to the use of the linear rollback method which was used in certain urban areas, for determining the percent reduction of VOC emissions necessary to achieve the NAAQS.

USEPA Response: USEPA has reviewed these issues and has determined that the State and local agencies have complied with the requirements of the Act. In particular, when adopting the carbon monoxide and ozone SIP elements, the State in every case provided for adequate public notice prior to convening and hearings on all elements of the SIP revisions. USEPA has also determined that the Ohio EPA either directly or indirectly supplied the local planning agencies with an updated emissions inventory. The emissions inventory used for the base year (1975) was consistent with USEPA guidance as outlined in "Requirements for Nonattainment Area Plans," and adequately reflects the emissions corresponding to the air quality data used in the specific attainment demonstrations. Furthermore, these inventories are updated annually thereby satisfying the requirements of Section 172(b)(4) of the Act.

Finally, linear or proportional rollback is one of the four analytical techniques approved by USEPA for use in determining the amount of hydrocarbon reductions necessary to demonstrate attainment of the ozone NAAQS. It was the responsibility of the State and/or local agencies to determine which specific method was to be used. In a number of areas the local agencies utilized the linear rollback approach. USEPA review of each urban area's individual calculation has indicated that they are correct and acceptable.

Comment: One commentator submitted extensive national comments and requested that the comments be considered part of the record for each State plan.

USEPA Response: Although some of the issues are not relevant to provisions in Ohio's submission USEPA notified the public of its response to these comments at 45 FR 11472, 11474 (February 21, 1980).

II. Comments on Specific Portions of the Ohio Submittal and USEPA Response

A. TCP and Attainment and RFP Demonstrations, Akron Urban Area

Summit and Portage Counties, Ohio are designated as nonattainment areas for ozone. Summit County is also a designated carbon monoxide nonattainment area. The control strategy developed for these areas demonstrate attainment of both the ozone and carbon monoxide NAAQS by December 31, 1982.

In the March 10, 1980 **Federal Register** (45 FR 15195) USEPA indicated that the transportation control plan and attainment demonstrations (ozone and carbon monoxide) for the Akron urban area satisfied all of the requirements for an approvable nonattainment area SIP. USEPA did, however, identify one deficiency in both the ozone and carbon monoxide reasonable further progress demonstrations.

On March 21, 1980 the State submitted to USEPA a request to redesignate Summit County as an attainment area for carbon monoxide. This request was made pursuant to section 107 of the Act. The request was based on three years (1977–1979) of monitoring data in Summit County which indicated that during these years there were no violations of the carbon monoxide NAAQS. Under such conditions, providing the State has satisfied USEPA's carbon monoxide monitoring requirements, USEPA may approve the redesignation request. If the request is approved and this area is redesignated

as either attainment or unclassifiable, the State would no longer be required to implement the measures proposed on July 27, 1979.

USEPA has evaluated the redesignation request and has proposed rulemaking on it in the October 17, 1980 **Federal Register**. Since there exists the possibility that the measures for carbon monoxide attainment proposed for the Akron urban area in the plan submitted on July 27, 1979 may not be necessary, USEPA is presently postponing final rulemaking action on the carbon monoxide portions of that submittal. Additionally, public comments received in response to the carbon monoxide portion of the plan and to USEPA's proposed action on it, will not be addressed in this notice. Those public comments will be discussed along with any final rulemaking taken in the future on the carbon monoxide component of the plan.

It should be noted that for major stationary sources of carbon monoxide located within, or desiring to locate within, this carbon monoxide nonattainment area, the growth restriction imposed by section 110(a)(2)(I) will remain in effect until either (1) USEPA takes final action to redesignate the area to attainment or unclassifiable or (2) USEPA takes final action on this portion of the plan, if the area is not redesignated.

For Akron, USEPA approves the ozone component of the TCP and the ozone attainment demonstration. Discussed below is the State's response to the deficiency noted in the ozone RFP demonstration.

Ozone RFP Demonstration: The ozone RFP line developed for the Akron area used 1975 VOC emissions data as a starting point for its RFP demonstration but chose a design value based on 1976 air quality. USEPA indicated in the March 10, 1980 **Federal Register** (45 FR 15196) that without documentation supporting the assumption that 1975 VOC emissions were equal to 1976 VOC emissions it would be incorrect to use 1975 VOC emissions with 1976 air quality data. USEPA requested either documentation supporting the emissions assumption or adjustment of the 1975 baseline VOC emissions to coincide with the VOC emission levels in 1976.

State Response: The State responded that prior to 1976, air quality data was not available for the Akron area. Furthermore, the State indicated that the 1976 emission levels were similar to the 1975 baseline emission levels. The State indicated that the 1975 emissions baseline was chosen for the following reasons: (a) The latest VOC point source and area source inventories were for 1975, (b) VOC emissions were nearly equivalent in 1975, 1976 and 1977.

USEPA Response and Final Determination: USEPA has reviewed the information supplied by the State and has determined that the State has adequately demonstrated that the 1976 VOC emission levels were similar to the 1975 baseline emission levels. Therefore, USEPA approves the ozone RFP demonstration originally submitted for the Akron area.

Canton Urban Area

Stark County, Ohio is a designated nonattainment area for ozone. The control strategy developed for the area demonstrates attainment of the ozone NAAQS by December 31, 1982.

In the March 10, 1980 **Federal Register** (45 FR 15195) USEPA indicated that the transportation control plan for the Canton urban area satisfied all of the requirements for an approvable nonattainment area SIP. During the public comment period USEPA did not receive any comments on either the transportation control plan or on USEPA's proposed approval. Therefore, USEPA approves the Canton urban area transportation control plan.

USEPA did, however, identify one deficiency in the ozone attainment and RFP demonstrations. As described below, the State has committed to resolve the deficiencies by a specified date.

Emission Reduction Estimates: In the ozone attainment demonstration a 100% reduction in VOC emissions from the cutback asphalt category was predicted to occur by December 31, 1982. In the March 10, 1980 **Federal Register** USEPA questioned the accuracy of this prediction given the possible continued usage in certain circumstances of cutback asphalt in 1982. Therefore, USEPA requested either technical support for this emission reduction estimate or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

State Response: The State indicated that they will conduct a survey on anticipated usage of cutback asphalt for the April–October period.

In a letter dated April 24, 1980 the State indicated that the results of the survey, along with any needed adjustments for the SIP baseline and/or strategy could be submitted by August 1, 1980. In subsequent conversations with the State it was determined, however, that due to limited staff resources the study and any needed additional time to submit the study and any needed adjustments. On August 6, 1980 the State in a letter from James F. McAvoy committed itself to submit the above mentioned material by August 1, 1981.

USEPA Response and Final Determination: USEPA believes that both the State's commitment and schedule as contained in the August 6, 1980 letter, to provide the results of the survey and any needed adjustments are acceptable. Therefore, USEPA approves the Canton urban area ozone attainment demonstration provided the State submits the above mentioned material by August 1, 1981. A notice soliciting public comment on the acceptability of this date appears elsewhere in today's **Federal Register**.

Demonstration of Ozone RFP: The ozone RFP line developed for the Canton area used 1975 VOC emission data as a starting point for its RFP demonstration but chose a design value based on 1977 air quality. USEPA indicated in the March 10, 1980 **Federal Register** (45 FR 15196) that without documentation supporting the assumption that 1975 VOC emissions were equal to 1977 VOC emissions it would be incorrect to use 1975 VOC emissions with 1977 air quality data. USEPA requested either documentation supporting the emissions assumption or adjustment of the 1975 baseline VOC emissions to coincide with the VOC emission levels in 1977.

State Response: The State responded that, as in the case of Akron: (a) Prior to 1976 air quality data was not available for the Canton area, (b) the latest VOC point source and area source inventories were developed in 1975 and (c) 1975 emission levels were similar to 1977 emission levels.

However, to account for the shorter timeframe (five years from 1977–1982 as opposed to seven years from 1975–1982) for the RFP demonstration and to account for any revisions made in the attainment demonstration due to the cutback asphalt survey the State has committed itself to submitting a revised ozone RFP line by August 1, 1981.

USEPA Response and Final Determination: USEPA believes that both the State's commitment and schedule to submit the revised ozone RFP demonstration line are acceptable. Therefore, USEPA approves the ozone RFP demonstration for the Canton urban area provided that the State submit the revised ozone RFP demonstration line to USEPA by August 1, 1981. A notice soliciting public comment on the acceptability of this date appears elsewhere in today's **Federal Register**.

Cincinnati Urban Area

Butler, Clermont, Hamilton and Warren Counties, Ohio and Boone, Campbell and Kenton Counties,

Kentucky are designated as nonattainment areas for ozone. Hamilton County is also designated as a nonattainment area for carbon monoxide. The control strategy developed for the Ohio counties does not predict attainment of either the ozone or carbon monoxide NAAQS by December 31, 1982. Attainment is predicted, however, by 1985 for ozone and 1987 for carbon monoxide.

According to section 172(a)(2) of the Act for those nonattainment areas which cannot demonstrate attainment of either the carbon monoxide and/or ozone NAAQS by December 31, 1982, the State may request an extension to show attainment, as expeditiously as possible, but no later than December 31, 1987. When requesting such an extension, section 172(b)(11) of the Act requires that the plan developed for the area must include the implementation of certain additional measures. The additional measures required are: (1) The development, adoption and implementation of a vehicle I/M program, (2) the establishment of a program for the analysis of alternatives for those sources proposing to locate in the area, and (3) the identification of other measures necessary to provide for attainment of the NAAQS by December 31, 1987.

In the March 10, 1980 **Federal Register** USEPA proposed approval of the transportation control plan, the ozone and carbon monoxide attainment demonstrations and the ozone RFP demonstrations. USEPA also proposed to approve the carbon monoxide RFP demonstration provided that prior to final rulemaking the State correct or commit to correct by an acceptable date the deficiency noted.

At that time USEPA proposed to disapprove the I/M program submitted (a discussion of USEPA's action on the I/M program is contained in a separate section of this notice). USEPA also indicated that rulemaking action on the program for the analysis of alternatives sites for sources proposing to locate in the area was to be published in a separate **Federal Register** since the State was at that time developing the program and intended to submit it as part of their New Source Review (NSR) SIP revision. USEPA's proposed rulemaking on the NSR SIP revision is detailed in the August 26, 1980 **Federal Register.** Final rulemaking on the NSR SIP revision appears in a separate notice published in today's **Federal Register.**

In addition to the State's response to the NPR USEPA received three public comments. Summarized below are the significant issues raised by the commentors, the deficiency noted in the NPR, the State's response to USEPA's proposed action, USEPA's response to the commentors and the State, and USEPA's final rulemaking action.

Demonstration of carbon monoxide RFP: The plan developed for the Cincinnati area did not contain an RFP demonstration line for carbon monoxide.

State Response: The April 24, 1980 correspondence from James F. McAvoy contains an RFP demonstration line which graphically displays the annual incremental reductions in total carbon monoxide emissions for the area. The average reduction demonstrated is approximately 35,000 tons per year (tpy).

It should also be noted that in the April 24, 1980 correspondence the Ohio EPA indicated that the program for the development of the analysis of alternative sites and the identification of additional measures to provide for attainment of the NAAQS in the area by December 31, 1987 would be addressed in a separate communication. USEPA's proposed rulemaking action is discussed in the August 26, 1980 **Federal Register.**

USEPA Response: USEPA has reviewed the carbon monxide RFP demonstration line submitted and has determined that it is consistent with the attainment demonstration and, therefore, approvable.

Public Comment: One commentor indicated that, even though the plan submitted for the Cincinnati area listed the Transportation Control Measures (TCM) implemented during 1975–1978, the plan did not quantify the air quality improvements that were realized as a result of the implementation of these TCM.

USEPA Response: The plan contains a table of the TCM implemented and their associated emission reduction estimates. Some of the TCM listed have no quantifiable emission reduction estimates associated with their implementation. These TCM, however, do have a positive impact on the air quality. The plan does state in the narrative (p. 7–10 of section 7.1.2) adequate justification for the absence of any estimated emission reductions from these TCM.

Public Comment: Another commentor questioned why two deficiencies cited in the Kentucky SIP developed by Ohio-Kentucky-Indiana (OKI) Regional Counsel of Governments for Boone, Campbell and Kenton Counties, Kentucky were not cited as deficient in the Ohio submittal. The commentor noted that "* * * specifically, (1) a commitment from the proper agencies to the implementation of TCM identified in the 1979 Transportation Improvement Program Annual Element (TIP/AE) (as examples, agencies currently uncommitted are Ohio Department of Transportation (DOT) and Southeast Ohio Regional Transit Authority (SORTA), and (2) limiting the TCM submitted to those with long-term as well as short-term air quality benefits."

USEPA Response: The plan developed by OKI for the Ohio portion of the Cincinnati urban area contains a resolution adopted by OKI's Executive Committee on March 8, 1979. The resolution commits the members of the Committee to achieve specific annual emission reduction targets which will ensure attainment of the NAAQS. The concurrence of the Ohio DOT, a member of the Committee, and SORTA, an ex-officio member of the Committee, indicates their commitment to cooperate in the transportation-air quality planning process and to implement the TCM necessary to achieve the annual emission reduction targets which would ensure attainment of the NAAQS.

In response to the second issue raised by this commentor it should be noted that the submittal contains a list (table 7–4) of TCM which have been recommended for implementation during 1980–1983. Some of the measures are expected to achieve specific emission reduction goals and thus to have long-term as well as short-term air quality benefits.

Public Comment: When commenting on the I/M program for the area one commentor also raised an issue in reference to the monitoring conducted for the area. (The I/M comment will be discussed in a separate section of this notice.) The commentor believed that the monitoring data taken from two of the five monitors in the area should not be accepted. The commentor stated that one monitor is located adjacent to a parking area and the other is too close to a widely travelled highway.

USEPA Response: USEPA policy states that carbon monoxide monitors are to be located in areas that are accessible to the public. Additionally, the citing of carbon monxide monitors depends on the area's wind direction, topography and traffic patterns. Under certain circumstances the data received from monitors located near parking areas and heavily travelled roadways yield a more accurate picture of the carbon monoxide levels in the area. USEPA has checked the location of the two monitors mentioned above and has determined that they are appropriately located.

Public Comment: One commentor stated that in the plan developed for the Cincinnati area, the RFP demonstrations do not show annual incremental

reductions as required by section 172(b)(3).

USEPA Response: In the NPR USEPA noted that the carbon monoxide RFP demonstration was not submitted. As stated earlier, on April 24, 1980 the State submitted an acceptable RFP demonstration to ensure attainment of the carbon monoxide NAAQS. Additionally, in the July 27, 1979 submittal (Appendix 9) the State submitted an acceptable ozone RFP demonstration which showed annual incremental reductions in VOC emissions.

USEPA Final Determination: USEPA has reviewed the State's response to the deficiency previously noted in the Cincinnati plan and has determined that the State has adequately corrected that deficiency. Additionally, USEPA has determined that none of the public comments received has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the transportation control plan, and the carbon monoxide and ozone attainment and REP demonstrations for the Cincinnati area.

It should be noted, however, that even though USEPA has approved the above cited individual elements of the Cincinnati plan, the State must satisfy the additional requirements of section 172(b)(11) of the Act. Until such time as USEPA approves the State's program to satisfy the section 172(b)(11) requirements, the growth restrictions of section 110(a)(2)(I) of the Act will be in effect in the Cincinnati urban area. Additionally, if the State fails to adequately address the additional 172(b)(11) requirements then the funding restrictions of section 176(a) and 316 of the Act may be imposed.

Cleveland Urban Area

Cuyahoga, Geauga, Lake, Lorain and Medina Counties are designated as nonattainment areas for ozone. Cuyahoga County is also designated as a nonattainment area for carbon monoxide. The control strategy developed for these counties does not predict attainment of either the ozone or carbon monoxide NAAQS by December 31, 1982.

According to section 172(a)(2) of the Act for those nonattainment areas which cannot demonstrate attainment of either the carbon monoxide and/or ozone NAAQS by December 31, 1982, the State may request an extension to show attainment as expeditiously as possible, but no later then December 31, 1987. When requesting such an extension, section 172(b)(11) of the Act requires that the plan developed for the area must include the implementation of certain additional measures. The additional measures required are: (1) The development, adoption, and implementation of a I/M program, (2) the establishment of a program for the analysis of alternatives for those sources proposing to locate in the area, and (3) the identification of other measures necessary to provide for attainment of the NAAQS by December 31, 1987.

In the March 10, 1980 **Federal Register** USEPA proposed approval of the transportation control plan, attainment and RFP demonstrations (ozone and carbon monoxide) developed for the Cleveland area, provided that prior to final rulemaking the State correct or commit to correct by an acceptable date the deficiencies noted. (USEPA noted a total of six deficiencies.) At that time USEPA proposed to disapprove the I/M program submitted (a discussion of USEPA's action of the I/M program is contained in a separate section of this notice.) USEPA also indicated that rulemaking action on the program for the analysis of alternative sites for sources proposing to locate in the area was to be published in a separate **Federal Register** since the State was, at that time, developing the program and intended to submit it as part of their New Source Review (NSR) SIP revision. USEPA's proposed rulemaking on the NSR SIP is detailed in the August 26, 1980 **Federal Register.** Final rulemaking on the NSR SIP revision appears in a separate notice published in today's **Federal Register.**

In addition to the State's response to the NPR, USEPA received two public comments. Summarized below are the significant issues raised by the commentors, the deficiencies noted in the NPR, the State's response to USEPA's proposed action, USEPA's response to commentors and the State, and USEPA's final rulemaking action.

Public Comment: One commentor believed that the plan submitted did not contain a complete travel forecasting methodology. The commentor felt that this work should be completed as soon as possible.

USEPA Response: The air quality-transportation planning process submitted by the Northeast Ohio Areaswide Coordinating Agency (NOACA), the lead local agency responsible for developing the Cleveland plan, contains provisions for the completion of the area's long range transportation plan during fiscal years 1981–83. A crucial precursor element in the development of the long range transportation plan is the development of an accurate travel forecasting methodology. Therefore, it is expected that the revised travel forecasting methodology will be completed by the end of fiscal year 1980 to allow for completion of the long range transportation plan during fiscal year 1981–1983.

Public Comment: In the March 10, 1980 **Federal Register** (45 FR 15198) the State is quoted as saying that "* * * Additional hydrocarbon area source controls (for the Cleveland area) will be evaluated and selected by NOACA." In an April 8, 1980 correspondence NOACA indicated that they had "* * * been given neither the responsibility for dealing with stationary sources, nor the funding to study them * * * If, however, funds were made available to NOACA from another source for the purpose of studying area source controls, NOACA would be prepared to consider conducting such a study * * * "

USEPA Response: Representatives of USEPA, Ohio EPA and NOACA met on May 3, 1980. The purpose of that meeting was to resolve the issue raised above. As a result of that meeting and subsequent commitments, USEPA has agreed to provide NOACA with additional funds and guidance to initiate and complete the area source study. Accordingly, NOACA has agreed to conduct the study.

Carbon Monoxide RFP Demonstration: The plan submitted for the Cleveland area did not contain a carbon monoxide RFP demonstration line.

State Response: The State submitted on April 24, 1980 a carbon monoxide RFP demonstration. This line shows the annual incremental reductions in carbon monoxide necessary to ensure attainment of the NAAQS for carbon monoxide.

USEPA Response: USEPA has reviewed the carbon monoxide RFP demonstration line submitted by the State for the Cleveland area and has determined that it is acceptable.

Transportation Control Plan—Implementor Commitments: One of the requirements for an acceptable TCP is that it contain a commitment by the regional policy board to meet specific annual emission reduction goals. The Cleveland TCP contains commitments to meet annual VOC emission reduction goals. The TCP, however, does not specify what these annual goals are.

State Response: The State on April 24, 1980 indicated that if attainment of the ozone NAAQS is to be achieved by 1987, it would be necessary for the area to achieve an annual average BOC emission reduction of 9,764 tons per year.

USEPA Response: USEPA has reviewed the emission reduction

calculation and has determined that if the area annually achieves that average amount of VOC emission reductions, attainment of the ozone NAAQS will be achieved by December 31, 1987. Therefore, the above noted figure is an acceptable emission reduction commitment.

Transportation Control Plans—Strategies Demonstrating Attainment: The Act requires that the TCP contain representative Transportation Systems Management (TSM)/SIP strategies. The list should include twelve representative strategies for each pollutant in the following categories: Projects to increase vehicle speed, projects to reduce congestion, projects to increase vehicle occupancy, and projects to improve mass transit.

Additionally, for each of these four categories, the submission must indicate the: Project title, description and location, project status, responsible agency, date of implementation, funding amounts and sources, and carbon monoxide and hydrocarbon emission reductions expected. The Cleveland TCP does not contain any of the above mentioned information.

State Response: In a letter dated July 23, 1980 the State submitted a list of representative TSM/SIP strategies.

USEPA Response: One July 23, 1980 USEPA received from the State a list of representative adopted TSM/SIP strategies. USEPA has received these strategies and has determined that the following are acceptable and satisfy the condition specified in the March 10, 1980 **Federal Register** (45 FR 15192).

Strategy	Implementor	Emission reduction
(1) Big Creek Bikeway	Cleveland Metropolitan Park District.	0.1 ton per year (tpy) hydrocarbon (HC) 1.34 tpy carbon monoxide (CO).
(2) Synchronization of traffic signals, Clifton Boulevard Lakewood, Ohio.	Ohio Department of Transportation/City of Lakewood.	31.9 tpy HC 405.66 tpy CO.
(3) New Bus Routes through Cuyahoga County	Greater Cleveland Regional Transit Authority.	292 tpy HC 4811 tpy CO.
(4) Traffic synchronization in North Olmstead and Wickliffe	City of North Olmstead and Wickliffe.	64.7 tpy HC 782.8 tpy CO.
(5) Areawide Car Pool Program	Northeast Ohio Areawide Coordinating Council	354.7 tpy HC 48.9 tpy CO.

Ozone Attainment Demonstration—VOC Emissions Inventory: The VOC emissions inventory indicated that there were no VOC emissions in Medina County. This assumption was based on the fact that there are no stationary sources for which reasonable available control technologies apply in this county. USEPA noted that even though this assumption may be correct, there is still the possibility of VOC emissions from other sources (i.e., usage of cutback asphalt). Therefore USEPA requested either technical documentation supporting the zero emission assumption or a reevaluation and adjustment of the emissions inventory to include VOC emissions from these other sources. It was also noted that any adjustment in the inventory could possibly require an adjustment in the ozone RFP and attainment demonstrations.

State Response: The State agrees that there are likely to be VOC emissions in the County in 1982 and 1987 from the cutback asphalt and gasoline marketing categories. The State estimates that there will be approximately 307 tons of VOC emissions per year in 1982 and 96 tons of VOC emissions per year in 1987 from the two categories. To account for these increased emissions the State revised their ozone RFP demonstration for the Cleveland area. Additionally, the State indicated that the development and implementation of additional mobile stationary source measures, already committed to by the State, will account for any negative impact which these VOC emissions may have on the ozone attainment demonstration.

USEPA Response: USEPA has reviewed the State's response and concurs with the revised inventory which includes VOC emissions from the cutback asphalt and gasoline marketing categories. Furthermore, the revised RFP demonstration is acceptable.

Ozone Attainment Demonstration—Emission Reduction Estimates: In the ozone attainment demonstration a 100% reduction in VOC emissions from the cutback asphalt category was predicted to occur by December 31, 1982. In the March 10, 1980 **Federal Register** USEPA questioned the accuracy of this prediction given the possible continued usage, in certain circumstances, of cutback asphalt. Therefore, USEPA requested either technical support for this emission reduction estimate or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

State Response: The State indicated that they will conduct a survey on the anticipated usage of cutback asphalt for the April-October period. In a letter dated April 24, 1980 the State indicated that the results of the survey could be submitted to USEPA by August 1, 1980. In subsequent conversations with the State it was determined that due to limited staff resources additional time would be needed. On August 6, 1980 the State, in a letter from James F. McAvoy committed to submit the above mentioned material/information by August 1, 1981.

USEPA Response: USEPA believes that both the State's commitment and schedule, as contained in the August 6, 1980 letter are acceptable.

A notice soliciting public comment on the acceptability of the August 1, 1981 date for submittal of the results of the survey appears elsewhere in today's **Federal Register.**

Ozone Attainment Demonstrations: The plan submitted on July 27, 1979 for the Cleveland Metropolitan Area does not predict that a sufficient reduction in hydrocarbon emissions will occur to ensure attainment of the ozone NAAQS by December 31, 1987. However, in a letter dated December 28, 1979 from Mr. James F. McAvoy to Mr. John McGuire, the Ohio EPA has made a commitment to assure attainment of the ozone standard in Cleveland by 1987. Mr. McAvoy stated in the letter that "In a coordinated effort to assure attainment, additional point source hydrocarbon reductions (VOC) will be developed by Ohio EPA, and additional transportation measures will be implemented through NOACA's transportation planning process. Additional hydrocarbon (VOC) area source controls will be evaluated and selected by NOACA."

USEPA stated in the NPR that it believed that the additional reductions in hydrocarbon emissions necessary to demonstrate attainment of the ozone NAAQS in Cleveland could be achieved by December 31, 1987. Furthermore, USEPA concurred with the approach outlined in the December 28, 1979, McAvoy letter.

USEPA proposed to approve the Cleveland attainment demonstration if the State submitted the following:

a. A list of the additional TSM strategies to be implemented which, in conjunction with the additional point source regulations, will demonstrate attainment of the ozone NAAQS; and

b. A schedule which delineates the dates on which the additional point

source controls will be developed and implemented.

Alternatively, USEPA proposed to approve the attainment demonstration if the appropriate State official provided USEPA with assurances that the above noted corrective materials would be submitted to USEPA on a negotiated date.

State Response: James F. McAvoy, in his April 24, 1980 letter committed to submitting the above noted list and schedule to USEPA by November 1, 1980.

USEPA Response: USEPA believes that both the State's commitment and date for submittal of the additional information are acceptable. A notice soliciting public comment on the acceptability of the November 1, 1980 date appears elsewhere in today's **Federal Register.**

USEPA Final Determination: USEPA has reviewed the State's response to the deficiencies previously noted in the Cleveland plan, and has determined that the State has adequately corrected and/or committed to correct the deficiencies noted. Additionally, USEPA has reviewed the public comments received and has determined that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the ozone and carbon monoxide RFP demonstrations, the carbon monoxide attainment demonstration and the transportation control plan. USEPA approves the ozone attainment demonstration on the condition that the State submit: (1) The revised VOC emission reduction estimates by August 1, 1981 and (2) the list of additional TSM strategies and point source regulations to be implemented along with the schedule for the development of the point source regulations by November 1, 1980. A notice soliciting public comment on the acceptability of these dates appears elsewhere in today's **Federal Register.**

It should be noted, however, that even though USEPA has approved of and/or conditionally approved the above mentioned individual elements of the Cleveland plan, the State must satisfy the additional requirements of section 172(b)(11) of the Act. Until such time as USEPA approves or conditionally approves the State's programs to satisfy the section 172(b)(11) requirements, the growth restrictions of section 110(a)(2)(I) of the Act will be in effect in the Cleveland urban area. Additionally, if the State fails to adequately address the additional 172(b)(11) requirements then the funding restrictions of section 176(a) and 316 of the Act may be imposed.

Columbus Urban Area

Franklin County is a designated nonattainment area for ozone and carbon monoxide. The control strategy developed for the area demonstrates attainment of both the carbon monoxide and ozone NAAQS by December 31, 1982. In the March 10, 1980 **Federal Register** USEPA proposed approval of the transportation control plan, and the carbon monoxide attainment demonstration and the ozone and carbon monoxide RFP demonstrations developed for the Columbus urban area. Additionally, USEPA proposed to approve the ozone attainment demonstration provided that the State prior to final rulemaking correct or commit to correct by an acceptable date the deficiency noted. During the public comment period the only response received was from the State. Summarized below is the deficiency noted in the NPR, the State's response and USEPA's response and final determination.

Ozone Attainment Demonstration—Emission Reduction Estimates: In the ozone attainment demonstration a 100% reduction in VOC emissions from the cutback asphalt category was predicted to occur by December 31, 1982. In the March 10, 1980 **Federal Register** USEPA questioned the accuracy of this prediction given the possible continued usage, in certain circumstances, of cutback asphalt. USEPA requested either technical support for this emission reduction estimate or a re-evaluation of the baseline emissions to account for the VOC emissions resulting from this category.

State Response: The State indicated that they will conduct a survey on anticipated annual usage of cutback asphalt for the April-October period. In a letter dated April 24, 1980, the State indicated that the results of the survey could be submitted to USEPA by August 1, 1980. In subsequent conversations with the State it was determined that due to limited staff resources additional time would be needed. On August 6, 1980 the State, in a letter from James F. McAvoy committed to submit the above mentioned material and information by August 1, 1981.

USEPA Response and Final Determination: USEPA has reviewed the State's response to the deficiency previously noted in the Columbus ozone attainment demonstration, and has determined that the State has adequately committed to correct this deficiency. No public comments were received on the Columbus plan. Therefore, USEPA approves the transportation control plan, the ozone and carbon monoxide RFP demonstrations and the carbon monoxide attainment demonstration. Additionally, USEPA approves the ozone attainment demonstration on the condition that the State submit the information requested to justify the 100% VOC reduction estimate by August 1, 1981. A notice soliciting public comment on the acceptability of the scheduled date appears elsewhere in today's **Federal Register.**

Dayton Urban Area

Montgomery, Greene, Clark, Darke, Miami and Preble Counties are designated as nonattainment areas for ozone. Additionally, Montgomery County is designated as nonattainment for carbon monoxide. The plan developed for these areas demonstrates attainment of the ozone NAAQS by December 31, 1982 and commits to implementing additional measures to ensure attainment of the carbon monoxide NAAQS by December 31, 1982. In the March 10, 1980 **Federal Register** USEPA proposed approval of the transportation control plan and ozone attainment and RFP demonstrations. Additionally, USEPA proposed to approve the carbon monoxide attainment and RFP demonstrations provided that prior to final rulemaking the State corrected or commit to correct by an acceptable date the deficiencies noted. During the public comment period USEPA received comments from the metropolitan lead local planning agency and the State. Summarized below are the significant issues raised by the commentors, the deficiencies noted in the NPR, the State's response to USEPA's proposed action, USEPA's response to commentors, and USEPA's final rulemaking action.

Public Comment: The lead local planning agency stated in a letter its approval and support of the effort being made to ensure attainment of the carbon monoxide NAAQS in Dayton by December 31, 1982. The planning agency, however, expressed concern over the fact that the method being employed focused on reducing carbon monoxide emissions only at monitored "hot spot" locations. The planning agency believed that a better approach would be to model the area for the location of potential carbon monoxide hot spots. To verify the existence of these hot spots monitoring would be conducted of those areas identified in the modeling analysis as potential hot spots. Once these potential hot spots were verified, measures would be developed to eliminate them. The lead planning agency also indicated that certain portions of the table on page 15200 and 15201 of the March 10, 1980 **Federal Register** should be corrected as follows:

Strategy	Potential implementor	Emission reduction
Channelization of traffic	*Affected jurisdictions*	142 tons HC (also will reduce concentrations at various hot spots).
Bicycle paths and exclusive routes to Dayton CBD	Miami Conservancy District *and affected jurisdictions.*	52 tons HC combined with storage facilities.
Conversion of selected streets (Dayton CBD) to exclusive bus use.	City of Dayton	14 tons HC Dayton CBD *(strategy 9-12 combined)*, 44 tons HC regional *(strategy 9-12 combined).*
Regulate number and price of public and private parking areas	City of Dayton *and affected jurisdictions.*	Same as above.
Favor short term parking rates over long term parking rates	City of Dayton *and affected jurisdictions.*	Same as above.
Develop parking surcharges and other forms of congestion pricing.	City of Dayton *and affected jurisdictions.*	Same as above.
Provide fringe and corridor parking	MVRTA, City of Dayton	10 tons HC (strategy 13-14).
Provide shuttle transit service from Dayton CBD to fringe parking	MVRTA	Same as above.
Public transit improvements	*Transit operations*	318 tons HC for all transit.

USEPA Response: The approach advocated by the lead planning agency goes beyond USEPA's requirements. USEPA policy for the 1979 SIP revisions requires only that an acceptable carbon monoxide attainment demonstration be based on monitored violations of the carbon monoxide NAAQS. As discussed below the State has adequately committed to remedy the monitored carbon monoxide problems and has, therefore, satisfied USEPA requirements.

In response to the planning agency's identification of errors in the table on pages 15200 and 15201 of the March 10, 1980 **Federal Register,** USEPA agrees with all of the corrections except for the strategy enumeration of the following:

Strategy	Potential implementor	Emission reduction
Conversion of selected streets (Dayton CBD) to exclusive bus use.	City of Dayton	14 tons HC Dayton CBD (strategy 8-11 combined) 144 tons HC regional (strategy *8-11* combined).
Provide fringe and corridor parking	MVRTA, City of Dayton	10 tons HC (strategy *12-13*).

Carbon Monoxide Attainment Demonstration: As stated earlier the original plan submitted on July 27, 1979 for the Dayton area did not predict attainment of the carbon monoxide NAAQS by December 31, 1982. However, in a letter dated January 14, 1980, the Ohio EPA stated that by remedying the carbon monoxide "hot spot" problems in the area, the appropriate reduction in carbon monoxide emissions would be achieved to assure attainment of the carbon monoxide NAAQS by 1982. Furthermore, it was stated in the letter that the Miami Valley Regional Planning Commission (MVRPC), the lead local planning agency would submit to the Ohio EPA (1) a list of the "hot spots" areas, and (2) a schedule for the study, evaluation and implementation of control measures for each "hot spot" to assure attainment of the carbon monoxide NAAQS by December 31, 1982.

The schedules (one for each "hot spot" intersection) were to be forwarded to Ohio EPA by March 1, 1980 and were to include interim milestones toward the implementation of each selected control measure along with commitments from the appropriate implementor(s).

In the March 10, 1980 **Federal Register,** USEPA stated its support of the efforts of the State to attain the carbon monoxide NAAQS as expeditiously as possible (in this case by 1982) and believed that through the implementation of the TSM/SIP strategies already scheduled for implementation and through the implementation of Reasonably Available Control Measures (RACM) for the "hot spot" areas, the carbon monoxide NAAQS could be attained by December 31, 1982. USEPA, however, requested the State to submit the following information:

(a) Technical monitoring and modelling data on all monitored violations.

(b) A list of the "hot spot" intersections in the Dayton area associated with the carbon monoxide nonattainment monitors.

(c) A description of each TSM measure implemented or adopted for implementation between 1979 through 1982 to eliminate the hotspot violations.

(d) A schedule developed for the study evaluation and implementation of control measures for each "hot spot" to assure attainment by 1982. The schedule is to specify the following: Submission of control plan; award of construction grants, initiation of on site construction, and final implementation of control measures (no later than 12/31/82).

(e) Evidence that MGTCC will provide priority funding to accomplish the tasks specified in item #4 above and will support the use of Federal transportation funds, if necessary.

Ohio EPA indicated that the above mentioned schedule and schedule items were to be submitted by MVPRC by July 1, 1980. In the NPR, USEPA stated that the Ohio EPA was to submit this information to USEPA within 30 days after receiving it from MVRPC. USEPA also noted that the control plan submission must include commitments from the appropriate implementor for each transportation control measure.

State Response: In a letter dated April 24, 1980 from Mr. James McAvoy, the State responded in the following manner to the information requested by the USEPA in the NPR:

(a) The modelling (proportional rollback) conducted indicated that a 56.7% reduction in carbon monoxide emission was necessary. The modelling used the design value of 23.1 mg/m/3/ which was obtained from carbon monoxide data obtained from the monitor located at 117 South Main Street.

(b) The "hot spot" intersection associated with the carbon monoxide nonattainment monitor is located at Fourth and Main Streets.

(c) A description of each TSM measure implemented or adopted for implementation between 1977 through 1982 to eliminate the "hot spot" violations are contained in Appendix 7D of Dayton's ozone/carbon monoxide SIP revision. Carbon monoxide reductions predicted through the implementation of these measures are included in the MVRPC FY 80 Transportation Improvement Program (TIP) (Section 2 and Appendix C). Also included in Appendix C of the TIP are the required

resolutions of commitment from the responsible implementors.

(d) The schedule for the study, evaluation, and implementation of control measures at the identified "hot spot" (Fourth and Main Streets) will be completed by MVRPC and submitted to the Ohio EPA by October 1, 1980 and transmitted to USEPA 30 days later, November 1, 1980.

The State indicated that MVRPC could not be expected to commence work on obtaining the information until after publication of the NPR. The NPR was not published until March (three months after the original estimate was made). Therefore, it became necessary for MVRPC to revise their original estimate by three months. Additionally, the State indicated that the October 1, 1980 date will allow the MVRPC to revise their FY 81 Overall Work Program to address the required additional carbon monoxide hot spot analysis and selection of the appropriate control measures.

(e) The State will submit USEPA by November 1, 1980, evidence of priority funding, if proven to be necessary.

SEPA Response: The State has supplied sufficient information to satisfy points a, b, and c identified in the NPR. Additionally, the commitment by the State to submit the items specified in point "d", and if necessary in point "e", by November 1, 1980 (30 days after receipt from MVRPC) is acceptable. A notice soliciting comment on the acceptability of this date appears elsewhere in today's **Federal Register.**

Carbon Monoxide RFP Demonstration: In the NPR USEPA requested that the State submit an acceptable carbon monoxide RFP demonstration line for the area.

State Response: The State indicated in the April 24, 1980, James F. McAvoy letter that the carbon monoxide RFP demonstration would be a schedule of transportation control measures sufficient to demonstrate attainment by December 31, 1982, and would be submitted to USEPA on November 1, 1980.

USEPA Response: USEPA believes that the schedule of transportation control measures which will be submitted on November 1, 1980, will provide an adequate demonstration of RFP. Furthermore, USEPA finds the State's commitment to submit the information on November 1, 1980 as acceptable. A notice soliciting comment on the acceptability of this date appears elsewhere in today's **Federal Register.**

USEPA Final Determination: USEPA has reviewed the State's response to the deficiencies previously noted in the Dayton carbon monoxide attainment and RFP demonstrations and has determined that the State has adequately corrected and/or committed to correct these deficiencies. USEPA has reviewed the public comments received and has determined that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the transportation control plan and ozone attainment and RFP demonstrations.

Additionally, USEPA approves the carbon monoxide attainment and RFP demonstration on the condition that the State submit by November 1, 1980: (a) The schedule for the study, evaluation and implementation of control measures for the "hot spot" area, (b) evidence of priority funding, if proven necessary and (c) a revised carbon monoxide RFP demonstration. A notice soliciting public comment on the acceptability of this date appears elsewhere in today's **Federal Register.**

Steubenville Urban Area

Jefferson County is a designated nonattainment area for both ozone and carbon monoxide. Due to the population of the area (less than 200,000) a specific plan to demonstrate attainment of the ozone NAAQS is not required by USEPA policy. A plan, however, is required to demonstrate attainment of the carbon monoxide NAAQS.

The July 27, 1979 submittal for the Steubenville urban area relied exclusively on mobile source control to achieve attainment of the carbon monoxide NAAQS. This approach to reducing the carbon monoxide levels in the area was predicated on the assumption that the high carbon monoxide violations were the result of transportation related problems. However, a reanalysis by the State of the carbon monoxide data indicated that this assumption was incorrect. Consequently, implementation of only mobile source controls was not sufficient to ensure attainment of the carbon monoxide NAAQS by December 31, 1982.

To demonstrate attainment of the carbon monoxide NAAQS by December 31, 1982 the State of Ohio in a January 8, 1980, letter from James McAvoy, director, Ohio EPA, committed to conduct additional studies of the carbon monoxide violations in the Steubenville area and to determine the specific stationary sources of the carbon monoxide violations. As a result of these studies, the State would develop, if necessary, additional RACT regulations for the control and reduction of carbon monoxide from the stationary sources causing the problem in the area.

In the March 10, 1980 **Federal Register** USEPA proposed to approve the carbon monoxide attainment demonstration for the Steubenville area provided that the State: (1) Submit within one year after final rulemaking action has been taken on this SIP revision, an acceptable attainment demonstration which shows that the Steubenville area will meet the carbon monoxide NAAQS by December 31, 1982; and (2) adheres to the schedule contained in the January 8, 1980, letter from Mr. James McAvoy. The schedule is as follows:

a. January 2 to June 30, 1980 Ohio EPA will conduct a study to determine the cause of the carbon monoxide violations in Steubenville.

b. Regulations will be proposed by August 31, 1980 that require a RACT level of control for carbon monoxide sources that are contributing to the violation and/or other appropriate control strategies will be proposed.

c. December 31, 1980—RACT regulations will be effective.

d. December 31, 1982—Sources will be required to comply with RACT regulations as expeditiously as practicable but no later than December 31, 1982.

State Response: In a letter dated May 27, 1980, Mr. James McAvoy committed to submit within one year after publication of this notice an acceptable carbon monoxide attainment demonstration for the Steubenville area. Additionally, in the same correspondence, Mr. McAvoy repeated the State's January 8, 1980 commitment to have all sources identified as needing additional control in compliance with the new RACT regulations by December 31, 1982. In the May 27, 1980 letter as well as in an April 24, 1980 correspondence Mr. McAvoy indicated that the carbon monoxide study could be completed by November 1, 1980 with the regulations adopted and submitted to USEPA by August 1, 1981. On August 6, 1980 Mr. McAvoy reaffirmed the State's commitment to submit any necessary regulations by August 1, 1981. However, Mr. McAvoy indicated that an additional two months, until January 1, 1981, would be needed for the Ohio EPA to complete the carbon monoxide study. The additional time was needed due to the complexity of the problem, the modelling approach proposed for the area, and limited staff resources.

USEPA Response: USEPA finds acceptable the State's commitment to submit a revised carbon monoxide attainment demonstration for the Steubenville area by August 1, 1981. USEPA, also finds acceptable the State's commitment to have all sources identified as needing additional control

in compliance by December 31, 1982. Given the complexity of the problem, USEPA recognizes the need for the State to have additional time to complete the study. Additionally, since the sources are still required to be in compliance by December 31, 1982 and since the additional time allocated to the interim increments of the schedule do not interfere with the compliance date, USEPA finds acceptable the January 1, 1981 date for completion of the carbon monoxide study and the August 1, 1981 date for the submittal of the necessary revised regulations.

Public Comment: One commentor noted some errors in the list on page 15202 of the March 10, 1980 **Federal Register.** This is a list of the areawide representative TSM/SIP strategies for carbon monoxide and hydrocarbon reductions to be implemented from 1979 to 1982. The commentor believes that the list should read as follows:

Improvement project	Implementor	Estimated year of completion	Estimated reduction
McLister Ave., Mingo Junction	ODOT	1975	1,856 gr/day in HC. 33,408 gr/day in CO.
Steubenville	ODOT	1976	16,127 gr/day in HC. 226,974 gr/day in CO.
Wayne Twp. Rd. 166A	*City of Mingo Junction*	1977	24 gr/day in HC. 300 gr/day in CO.
Ohio Route 7 Relocation	ODOT	1977	146,935 gr/day in HC. 1,804,703 gr/day in CO.
2nd St. Bridge, Dillonvale	Jefferson City	1978	15 gr/day in HC. 209 gr/day in CO.
CR 10 Harrison Co. to Adena SCL and Adena NCL to SR 152.	*ODOT*	1979	14,258 gr/day in HC. 160,398 gr/day in CO.
Sinclair Avenue, Steubenville	*Jefferson City*	1979	3,554 gr/day in HC. 45,934 gr/day in CO.
Benita Dr.-West Mingo Junction	Jefferson City	1979	2,551 gr/day in HC. 21,360 gr/day in CO.
Main Street, Toronto	*Jefferson County*	1979	2,557 gr/day in *CO.* 30,359 gr/day in *HC.*
U.S. 22 and SR 43, Wintersville	*ODOT*	1979	866,894 gr/day in *CO.* 71,391 gr/day in *HC.*
TR 181 CR 26 to Camp C. Ent. Road.	*ODOT*	1979	7,459 gr/day in *CO.* 953 gr/day in *HC.*
SR 150 .15 mi. E., TR 111	ODOT	1980	1,141 gr/day in *CO.* 100 gr/day in *HC.*
SR 150 .35 mi. W., CR 14	ODOT	1980	1,369 gr/day in *CO.* 119 gr/day in *HC.*
SR 150 at Rayland, WCL	ODOT	1980	2,578 gr/day in *CO.* 226 gr/day in *HC.*
Lovers Lane, Steubenville	*City of Steubenville*	1980	19,992 gr/day in *CO.* 1,999 gr/day in *HC.*
CR 34, SR 43 to U.S. 22	*Jefferson County*	1981	19,978 gr/day in *CO.* 1,665 gr/day in *HC.*
CR 69 Mingo Jct., NCL to CR 30	*Jefferson County*	1981	3,376 gr/day in *CO.* 253 gr/day in *HC.*
Steubenville, Weirton Bridge	*West Virginia Dept. of Hwys*	1982	802,433 gr/day in *CO.* 16,644 gr/day in *HC.*
SR 152 .62 mi. S. of TR 241 to .27 mi. S. of SR 213.	*ODOT*	1982	34,088 gr/day in *CO.* 2,556 gr/day in *HC.*
SR 152 .2 mi. S. TR 611 to 1.07 mi. N. CR 56.	*ODOT*	1982	27,584 gr/day in *CO.* 1,971 gr/day in *HC.*

USEPA Response: USEPA has reviewed the revised list submitted by the commentor and concurs with it.

USEPA Final Determination: USEPA has determined that the State has adequately committed to correct the deficiencies noted and that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the transportation control plan developed for the area. Additionally, USEPA also approves the carbon monoxide RFP and attainment demonstrations provided that the State: (a) Submits an acceptable carbon monoxide attainment with an acceptable RFP demonstration by August 15, 1981 and (b) submits to USEPA by January 1, 1981 the results of the carbon monoxide study and by August 1, 1981 the necessary revised regulations. A notice soliciting public comment on the acceptability of the committed dates appears elsewhere in today's **Federal Register.**

Toledo Urban Area

Lucas and Wood Counties are designated as nonattainment areas for ozone. Additionally, based on monitored violations of the carbon monoxide NAAQS occurring in 1975, Lucas County was designated as a nonattainment area for carbon monoxide. The plan developed for these areas and submitted to USEPA on July 27, 1979 (with an addendum submitted on January 15, 1980) predicts attainment of the ozone NAAQS by December 31, 1982 and commits to implementing additional measures necessary to ensure attainment of the carbon monoxide NAAQS by December 31, 1982.

In the March 10, 1980 **Federal Register** USEPA proposed approval of the transportation control plan and the ozone attainment and RFP demonstrations. Additionally, USEPA proposed to approve the carbon monoxide attainment demonstration provided that prior to final rulemaking the State correct or commit to correct by an acceptable date the deficiency noted.

On March 21, 1980 the State submitted to USEPA a request to redesignate Lucas County as an attainment area for carbon monoxide. This request was made pursuant to section 107 of the Act. The request was based on three years (1977–1979) of monitoring data in Lucas County which indicated that during these years there were no violations of the carbon monoxide NAAQS. Under such conditions, providing the State has satisfied USEPA's carbon monoxide requirements, USEPA may approve the redesignation request. If the request is approved, and the area is redesignated as either attainment or unclassifiable, the State would no longer be required to implement the measures proposed on July 27, 1979.

USEPA has evaluated the redesignation request and has proposed rulemaking on it in the October 17, 1980 **Federal Register.** Since there exists the possibility that the measures proposed for carbon monoxide attainment in the plan submitted on July 27, 1979 (with an addendum submitted on January 15, 1980) may not be necessary for the Toledo urban area, USEPA is presently postponing final rulemaking action on the carbon monoxide portions of that submittal. Additionally, public comments received in response to the carbon monoxide portion of the plan and to USEPA's proposed action on it, will not be addressed in this notice. Those public comments will be discussed at the time final rulemaking action, if any, is taken on the carbon monoxide component of the plan.

It should be noted that for major stationary sources of carbon monoxide located within, or desiring to locate within, this carbon monoxide nonattainment area, the growth restriction imposed by section 110(a)(2)(I) will remain in effect until either (1) USEPA takes final action to

redesignate the area to attainment or unclassifiable, or (2) USEPA takes final action on this portion of the plan, if the area is not redesignated.

For Toledo, this notice will only discuss USEPA's final rulemaking on the ozone component of the transportation control plan, the ozone attainment and RFP demonstrations and the public comments which pertain to these portions of the plan.

Public Comment: In response to the transportation control plan developed for the area, one commentor raised the following issues:

(a) The commentor believes that certain strategies (i.e., park and ride and fringe area parking lots) which were preliminarily rejected for study and implementation, should be considered at least for future study due to their possible low cost and high acceptability.

(b) The implementation of strategy 1, Improved Transit, calls for a 100% increase in bus miles to bring about a 50% increase in ridership. The commentor questions whether funding of the magnitude necessary to implement this strategy will be available during the period 1982–87. Furthermore, the commentor questions whether a local commitment of that magnitude could be made for those years, given current economic conditions in Toledo.

USEPA Response: (a) The Toledo plan states (page III–2) that the six strategies currently rejected, will be studied further, prior to July, 1980, as more information about each of them becomes available. Furthermore, it should be noted that the Toledo Metropolitan Area Council of Governments (TMACOG) has committed to study further all eighteen strategies listed in section 108(f)(1)(A) (of which park and ride and fringe area parking lots are included) of the Act. TMACOG has also committed in their FY 1981 Overall Work Program to conduct this project. (b) TMACOG is currently discussing with the local mass transit district the possible alternative methods for obtaining additional local financial resources to ensure that the 100% increase in service could be realized. Some of the options which the regional mass transit service has for raising additional funds to meet the 100% goal are (i) to increase ridership and therefore gross receipts through a more efficient and productive system, (ii) to increase fare price, or (iii) to request an additional tax levy.

Public Comment: As with the Cincinnati plan, one commentor noted that the Toledo plan does not contain RFP demonstrations which show annual incremental reduction in emissions.

USEPA Response: As discussed previously, this notice will only discuss the ozone component of the Toledo plan. Therefore, the carbon monoxide RFP demonstration will not be discussed at this time. For ozone, however, the Toledo plan does contain an acceptable RFP demonstration.

Public Comment: When reviewing the proposed action on the Toledo nonattainment area plan one commentor had a number of questions on the VOC emission reductions and ozone RFP demonstration. These questions were prompted by the March 14, 1980 **Federal Register** (45 FR 16503). In that **Federal Register** USEPA proposed to approve as a SIP revision, the commitment by the Ohio Department of Transportation (DOT) to reduce the use of cutback asphalt in Wood, Sandusky and Ottawa Counties by a sufficient amount to offset the VOC emissions expected from the new Pre-Finished Metals, Inc. metal coating plant located in Lake Township, Ohio. The commentors questions, as they apply to the Toledo urban area plan, are as follows:

(a) Was the application for the permit received prior to July 1, 1979, and was that permit fully completed (i.e., were specific trade-offs identified)?

(b) If the July 1, 1979 date was met and if the completed application was received in the period January 1–June 30, 1979, had the Governor of Ohio adopted and submitted a SIP to USEPA for which he could assess the emissions impact?

(c) Is this Pre-Finished Metals, Inc. proposal taking credit for an action proposed for approval by USEPA on March 10, 1980? Has the projected emissions decrease from the cutback asphalt prohibition been double counted in the SIP?

(d) Is there a demonstration that this action would not interfere with Reasonable Further Progress?

(e) Does the November 6, 1978 commitment for offset to Pre-Finished Metals have any SIP status and did it meet the proper procedural requirements for public comment, etc.?

(f) In April the 1978 "Workshop on Requirements for Nonattainment Area Plans" cutback asphalt was identified as an available RACT for nonattainment areas. Is an emissions offset as proposed allowable after the date that USEPA went on record as requiring RACT for all ozone nonattainment plans?

(g) In summation the commentor states that he believes the proposal for Pre-Finished Metals must be considered as part of the Toledo Urban Area SIP. As such it cannot be approved as a revision to the SIP prior until final approval of the SIP (Toledo Urban Area SIP) proper.

USEPA Response: (a & b) The fully completed permit for Pre-Finished Metals Inc. along with identifiable specific offsets was submitted to the Ohio EPA on November 13, 1978. On May 23, 1979, the Governor of Ohio submitted as a SIP revision the permit for Pre-Finished Metals to USEPA.

On July 27, 1979 (with supplements in September and December of 1979 and January of 1980) the Governor of Ohio submitted an adopted nonattainment area plan for the Toledo urban area. This plan contains an assessment of the total VOC emissions in the area.

(c) The State of Ohio has correctly accounted for the VOC emission reductions that are to occur both as a result of the permit for Pre-Finished Metals Inc. and as a result of the cutback asphalt prohibition. The projected emissions decrease from the cutback asphalt prohibition has not been counted twice nor has the Pre-Finished Metals proposal taken credit for an action proposed for approval by USEPA in the March 10, 1980 **Federal Register.**

(d) At the time of issuance of the permit an RFP demonstration was not required to be submitted. As stated earlier the ozone RFP demonstration submitted with the Toledo nonattainment demonstration shows annual incremental reductions in VOC emissions necessary to ensure attainment of the ozone NAAQS by 1982. Furthermore, since the decrease in VOC emissions anticipated from the Ohio DOT reduction in the usage of cutback asphalt in Wood, Sandusky and Ottawa Counties (165 tons per year) is greater than the anticipated VOC emissions from the new Pre-Finished Metals plant (138 tons per year) it is evident that the permit will not interfere with RFP but will contribute to the expeditious attainment of the ozone NAAQS.

(e) USEPA considers the Governor's submittal as a SIP revision and the November 6, 1978 letter from the Director of ODOT to the Director of OEPA to be a commitment which is sufficient to meet the requirements of Section V of the Interpretative Ruling. Additionally, the November 6, 1978 commitment was part of the overall Pre-Finished Metals permit considered at a public hearing held on March 13, 1979 in Ohio EPA's offices in Bowling Green, Ohio. This hearing was announced in local newspapers of general circulation a full thirty days prior to its occurrence. Therefore, USEPA believes that the State has met the proper procedural requirements for public comment.

(f) The Clean Air Act sets the baseline for emission offset calculations as the

SIP requirements at the time of the permit application. Since there were no SIP limitations regarding the VOC emissions from the use of cutback asphalt in Wood, Sandusky and Ottawa Counties on the date that the Pre-Finished Metals application was submitted, all reductions of VOC in the three Counties resulting from the replacement of cutback asphalt with emulsified asphalt for certain applications are available as offsets.

(g) Both the Pre-Finished Metals permit and the nonattainment area plan for the Toledo urban area are revisions to the existing ozone SIP for Ohio. Therefore, even though VOC emissions from the new Pre-Finished Metals plant must be accurately accounted for in the urban nonattainment area plan, approval of the permit as a SIP revision is not contingent on approval of the Toledo nonattainment area plan. Therefore, its approval should not be considered as part of the Toledo urban area SIP revisions.

USEPA Final Determination: USEPA has reviewed the public comments received and has determined that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the ozone attainment and RFP demonstrations and the ozone component of the transportation control plan developed for the Toledo urban area.

Vehicle Inspection and Maintenance (I/M)

In the March 10, 1980 **Federal Register** (45 FR 15205) USEPA outlined deficiencies in the I/M program. USEPA noted that for all the States to have a fully approvable I/M SIP the States needed to correct all the deficiencies discussed. On April 24, 1980, the State of Ohio informed USEPA of the progress being made in adopting Senate Bill #240 (S.B. #240). Because of the present status of S.B. #240, USEPA, at this time, is not taking final action on the I/M program submitted by the State. Action on the I/M program will be published in a subsequent **Federal Register.** Until USEPA approves or conditionally approves the State's I/M program, the growth restrictions of section 110(a)(2)(I) of the Act will be in effect in the Cleveland and Cincinnati urban areas. Additionally, if the State fails to adequately address the additional 172(b)(11) requirements then the funding restrictions of section 176(a) and 316 of the Act may be imposed.

Hydrocarbon and Carbon Monoxide Emissions from Stationary Sources

Section 172(b)(2) of the Clean Air Act requires the application of reasonably available control technology to stationary sources of VOC emissions in nonattainment areas. USEPA has developed Control Techniques Guidelines (CTGs) which provide information on available air pollution control equipment and techniques. The CTGs also contain recommendations of what USEPA calls the "presumptive norm" for RACT.

Where state regulations are not supported by the information in the CTGs, the State must provide an adequate demonstration that its regulations represent RACT, or amend the regulations to be consistent with the information in the CTGs. An explanation of CTGs and their practical effect is contained in a September 17, 1979 supplement (44 FR 52761) to the General Preamble.

As noted in the General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas, (44 FR 20376) April 4, 1979, the minimum acceptable level of stationary source control for ozone SIPs, includes RACT requirements for VOC sources covered by the CTGs USEPA issued by January 1978 and schedules to adopt and submit by each future January additional RACT requirements for sources covered by CTGs issued by the previous January. The Ohio submittal includes a commitment from the State to adopt any additional rules representing RACT on stationary sources of VOC for which USEPA issues CTGs. The Administrator approves this commitment by the State as part of the federally approved Ohio State Implementation Plan.

The submittal date for the first set of additional RACT regulations was revised from January 1, 1980 to July 1, 1980 by the **Federal Register** notice of August 28, 1979 (44 FR 50371). Today's approval of the ozone portion of the Ohio plan is contingent on the submittal of the additional RACT regulations which are due by July 1, 1980 for CTGs published between January 1978 and January 1979.

In addition, by each subsequent January beginning January 1, 1981, RACT requirements must be adopted and submitted to USEPA. The above requirements are set forth in the "Approval Status" section of the final rule. If RACT requirements are not adopted and submitted to USEPA according to the time frame set forth in the rule, USEPA will promptly take appropriate remedial action.

Regulations for the control of VOC and carbon monoxide emissions from stationary sources are contained in revised Chapter 3745–21 of the Ohio Administrative Code (hereinafter referred to as Chapter 3745–21). Chapter 3745–21 contains 10 sections with each section containing numerous subsections. In the March 10, 1980 **Federal Register** (45 FR 15205) USEPA noted two areas of Chapter 3745–21 (subsections (M)(2) and (R)(3)(a) of rule 09) which in USEPA's judgment were deficient. USEPA proposed to approve these areas if the State corrected the deficiencies prior to final rulemaking or if the State made a commitment to correct the deficiencies on a date negotiated between the State and the USEPA. Additionally, USEPA proposed to disapprove the compliance schedule in new rule 04(C)(18) of Chapter 3745–21 as it applies to facilities presently covered by the compliance schedule in old rule 04(C)(1) of Chapter 3745–21. Except for the subsections noted above USEPA proposed to approve rules 01 (Definitions), 02 (Ambient Air Quality Standards and Guidelines), 03 (Methods of Ambient Air Quality Measurement), 04 (Attainment Dates and Compliance Time Schedules), 05 (Nondegradation Policy), 06 (Classification of Regions), 07 (Control of Emissions of Organic Materials from Stationary Sources), 08 (Control of Carbon Monoxide Emissions from Stationary Sources), 09 (Control of Organic Compounds from Stationary Sources), and 10 (Compliance Test Methods and Procedures) of Chapter 3745–21.

In the March 10, 1980 **Federal Register** USEPA noted that the Ohio regulations include a provision which exempts methylene chloride and methyl chloroform from control. The State has chosen to retain this provision. This volatile organic compound, while not appreciably affecting ambient ozone levels, is potentially harmful. Methylene chloride has been identified as mutagenic in bacterial and mammalian cell test systems, a circumstance which raises the possibility of human mutagenicity and/or carcinogenicity. As stated in the NPR USEPA will not disapprove the State's SIP submittal based on the inclusion of this exemption. USEPA, however, does not endorse or encourage the increased use of this compound or compliance by substitution. Furthermore, State officials and sources should be advised that there is a strong possibility of future regulatory action to control these compounds. Sources which choose to comply by substitution may well be required to control these compounds as

a consequence of future regulatory actions.

It also should be noted that certain portions of the regulations allow for the Director of Ohio EPA to approve emission limitations different from the applicable limitation, to exempt certain emissions, or to approve alternate control technologies. As examples of this, rule 09(C)(3) of Chapter 3745–21 (for surface coating of automobiles and light duty trucks) and rule 09(D)(3)(a) of Chapter 3745–21 (for surface coating of cans) allow for the possibility of alternative emission limits and may even allow for a source to "bubble" its emissions. Any scheme designed to allow a source to operate under an alternate emission limitation, to exempt certain emissions or to allow an alternate control technology must be submitted to and approved by the USEPA as a SIP revision in accordance with section 110(a)(3)(A) of the Act and applicable regulations. Additionally, any scheme which allows for a source to bubble its emissions should be consistent with USEPA's bubble policy. The bubble policy is presented in the December 11, 1979 **Federal Register** (44 FR 71780) with a supplementary notice published on January 23, 1980 **Federal Register** (45 FR 5616).

The State must submit each alternate compliance scheme involving control equipment (bubble) to USEPA as a SIP revision. In those bubble situations where the emissions to be used in the bubble calculation are dependent on the capture and control efficiency of a control system, the emissions must be determined through appropriate testing procedures. The resulting overall control efficiency for each specific piece of add-on control equipment employed must be established. Establishing this limit as part of the SIP will simplify procedures required to determine compliance. Additionally, it should be noted that the critical parameters of the control system must be continuously monitored during the testing period so as to allow for the assessment of the continued performance at the established rate.

During the public comment period USEPA received comments from numerous individuals on USEPA's proposed action on specific portions of rules 04, 09 and 10 of Chapter 3745–21. No comments were received on rules 01, 02, 03, 05, 06, 07, or 08 of Chapter 3745–21. Therefore, USEPA approves rules 01, 02, 03, 05, 06, 07 and 08 of Chapter 3745–21.

Summarized below are the State's and interested individuals' response to USEPA's proposed action on rules 04, 09 and 10 of Chapter 3745–21, and USEPA's response and final determination on these rules.

Subsection (M) of Rule 09 of Chapter 3745–21. This subsection is concerned with controlling organic compound emissions from the source category petroleum refinery wastewater separators. In particular, new rule 09(M)(2) requires the owners or operators of forebay sections and any other separator section which recovers 200 gallons or more of organic compounds per day to comply with the schedules contained in new rule 04(C)(13) of Chapter 3745–21. Rule 09(M)(2), however, exempts from compliance those wastewater separators with forebay sections or any other separator section which recovers less than 200 gallons of organic compounds per day. USEPA noted in the March 10, 1980 **Federal Register** (45 FR 15208) that such an exemption was not supported by the CTG's as being RACT. Therefore, USEPA requested the State to submit either (a) technical support justifying the exemption as representing RACT, or (b) documentation proving that the allowable emissions from the State's proposal are within 5 percent of those emissions resulting from the adoption of the USEPA "presumptive norm." If the State was unable to do either a or b then they were requested to commit to extend the applicability of rule 09(M)(2) to cover those separator sections which recover less than 200 gallons of organics per day.

Public Comment: Two industrial representatives have commented on the provisions of this rule and on USEPA's proposed action. The contention of one commentor is that most of the volatile oil will be recovered in the forebay section and that "* * * only an insignificant amount of oil with low volatility and in globule form will be carried along to the main separator section." Further, he states that the forebay sections are easily covered, but the main separator is more difficult and impractical to cover because it is generally equipped with flight scrapers and manually adjusted skimmers which require operator observation and routine maintenance. Therefore, he believes that the intent of the regulation is met by covering only the forebay section and that the 200 gallons per day exemption is reasonable.

The second commentor believes that the need for separator covers should be related to the amount of oil contained in the wastewater flowing to that particular section of the separator. He states that the 200 gallon/day limit of recovered oil for each section is practical and reasonable. Furthermore, he contends that the cost effectiveness of covering those areas of low oil recovery is very low and not justifiable.

USEPA Response: Contrary to the issue that the first commentor raised USEPA believes that the intent of the regulation is clearly stated; namely, that "* * * all forebay sections and any other section which recovers 200 gallons or more per day of organic compounds * * *" must be equipped with covers and seals. USEPA agrees with the second commentor when he states that the need for separator covers should be related to the amount of oil contained in the water flowing to that particular separator section. However, as stated in the March 10, 1980 **Federal Register**, USEPA does not believe that the 200 gallons/day exemption represents RACT. USEPA therefore requested the State to justify either (1) that the proposed regulation is RACT or (2) that the allowable emissions resulting from the proposed regulation differ by no more than 5% from the VOC emissions resulting from the adoption of USEPA's presumptive norm for ACT. This judgment is based on the fact that covers are commercially available for separator sections other than just for the forebay section. These covers are designed to allow for the periodic operator observation and maintenance necessary for the correct operation of the particular separator section. Furthermore, extrapolating from the CTG's to determine the net annualized cost indicates that by installing such control equipment the company would realize a monetary credit, not a cost.

State Response: The State has submitted a study which indicates that the amount of emissions that would result from the regulation for this source category exceeds by more than five percent the VOC emissions resulting from the adoption of USEPA's presumptive norm for RACT. The State responded that they would eliminate the exemption for those wastewater separators which are used for contaminated refinery process wastewater separators but not for refinery wastewater separators which are minor sources (i.e., such as separators which are used only for uncontaminated once-through cooling water or intermittent stormwater run-off).

In a letter dated April 15, 1980 the State indicated that the revised regulation could be submitted to USEPA by January 1, 1981. In subsequent conversations with the State it was determined that due to limited staff resources additional time would be needed. On August 6, 1980 the State, in a letter from James F. McAvoy committed

to submit the revised regulations by February 15, 1981.

USEPA Response: USEPA has reviewed and finds acceptable the study submitted by the State and the February 15, 1981 date for the submittal of the revised regulation. It should be noted, however, that even though the State considers it unreasonable to control separators which are used only for uncontaminated once-through cooling water or intermittent stormwater run-off, if the revised regulation contains an exemption for those sources, the State must demonstrate that the resultant emissions differ from the CTG allowable emissions by no more than five percent.

Subsection (R) of Rule 09 of Chapter 3745–21. This subsection is concerned with controlling organic compound emissions from the source category gasoline dispensing facilities. Paragraph 3(a) of this subsection exempts from compliance with the preceding paragraphs of this rule any gasoline dispensing facility which has an annual throughput of less than 240,000 gallons of gasoline. In the March 10, 1980 **Federal Register** (45 FR 15208) USEPA stated that an exemption for facilities with an annual throughput of less than or equal to 120,000 gallons would represent RACT.

Any exemption for those facilities with an annual throughput of greater than 120,000 gallons would have to be either: (a) Technically supported as RACT, or (b) the State would need to demonstrate that the emissions occurring as a result of this exemption would be no more than five percent greater than emissions occurring from a regulation exempting only facilities with an annual throughput of 120,000 gallons or less. If the State was not able to supply the appropriate justification then the State was required to extend the area of applicability of rule 09(R) of Chapter 3745–21 to cover those facilities with an annual throughput of greater than 120,000 gallons.

Public Comment: One commentor, an oil company representative, has expressed concern over USEPA's action with regard to the exemption for gasoline dispensing facilities. The commentor believes that for his company the exemption proposed by the State (less than a 240,000 gallons annual throughput) is economically more feasible than the USEPA technically supported exemption (less than a 120,000 gallon annual throughput). Furthermore, he indicates that for all the stations owned by his company only a small percentage have an annual throughput of less than 240,000 gallons. Therefore, he contends that the amount of vapor controlled (VOC emissions) will not change significantly if the 240,000 gallon exemption is allowed.

USEPA Response: USEPA cannot approve an exemption, which applies universally to all sources covered by a particular source category, without the proper technical data which demonstrates that the regulation with the exemption is RACT, or which demonstrates that the total emissions that would occur as a result of the exemption will not differ by more than five percent from the amount that would occur as a result of the adoption of the USEPA recommended exemption. In the March 10, 1980 **Federal Register** USEPA requested the State to submit such documentation. Summarized below is the State's response.

State Response: The State is currently studying the emissions resulting from the proposed regulation and has committed to submit the results to USEPA by July 1, 1980. If it should be necessary to revise rule 09(R)(3)(a) the State could submit the State adopted revised rule to USEPA by January 1, 1981. In subsequent conversations with the State it was determined that due to limited staff resources the study would not be completed until October 1, 1980 and, consequently, the regulations could not be submitted until February 15, 1981. On August 6, 1980 the State, in a letter from James F. McAvoy committed to submit the study by October 1, 1980 and the revised regulations by February 15, 1981.

USEPA Response: USEPA has reviewed the commitments made by the State for rule 09(R) of Chapter 3745–21 and has determined that the October 1, 1980 date for submittal of the study and the February 15, 1981 date for submittal of the revised regulations are acceptable.

Section G of Rule 09 of Chapter 3745–21. This subsection established an emission limitation of 2.9 lbs. VOC per gallon of coating, excluding water, from a paper coating line.

Public Comment: One industrial representative commented that the emission limitation is technically unachievable and economically infeasible. Specifically, it is believed that the 90% capture goal utilized by Ohio is unrealistic and should be replaced by a 75% capture goal. The commentor believes the USEPA should disapprove the rule based on these facts.

USEPA Response: Section 172(b)(2) of the Clean Air Act requires the implementation of reasonably available control technology (RACT). The State may consider economic and technological feasibility when determining RACT. Additionally, the State may promulgate regulations which are more stringent than RACT. As stated in the March 10, 1980 **Federal Register** (45 FR 15192), USEPA received this regulation and found that at a minimum it represents RACT and is acceptable to USEPA. Therefore, USEPA has no basis for disapproving the emission limitations contained in the Ohio SIP for fabric coating.

Section 0 of Rule 09 of Chapter 3745–21. This subsection specifies control of VOC emissions from the following three categories of solvent metal cleaning operations; cold cleaners, open top vapor degreasers and conveyorized degreasers. This rule requires the installation of specific air pollution control equipment and the adherence to good operating procedures to achieve a reduction in the VOC emission from the three categories of solvent metal cleaning operations.

Public Comment: Two commentors expressed concern about sections 3(c) and 4(a). These sections detail alternate equipment (i.e., minimum freeboard ratio refrigerated chiller, enclosed design, or carbon adsorption) for controlling VOC emissions from open top degreasers and conveyorized degreasers, respectively. The commentors believe that the requirement that the carbon adsorber exhaust less than 25 parts per million (ppm) averaged over one complete adsorption cycle is too stringent. They feel that the emission limit for the carbon adsorbers is so stringent that the affected sources will not install carbon adsorbers but instead opt for a less efficient means of control (i.e., a refrigerated chiller).

USEPA Response: Under the provisions of the regulation it is possible for a source to choose a control device other than the carbon adsorber. It is true that for most applications a carbon adsorber is the most efficient of the four control alternatives and that a well designed and maintained adsorber will normally capture approximately 95% of the organic input into the bed. A carbon adsorption system for solvent metal cleaning systems, however, will not normally achieve this 95% level of control due to fugitive VOC emissions occurring as a result of such factors as spills, leaks, drag-out on parts and disposal of waste solvents. Therefore, in practice a solvent metal cleaning control system which employs either a carbon adsorber or a refrigerated chiller (one of the options) will be achieving approximately the same emission reduction efficiency. USEPA believes that sources choosing the refrigerated

chiller are not choosing a less efficient control device.

The 25 ppm emission standard specified for the carbon adsorption system is to ensure that the system is operating efficiently. Due to the nature of the other control mechanisms specified in this regulation emission standards would not be appropriate. The 25 ppm limit for the carbon adsorption is based on the availability of continuous monitoring devices which can detect solvent vapors at this concentration level. The limit ensures that the adsorber is operating correctly and is regenerated in a timely manner. USEPA, therefore, believes that this emission limit is appropriate for the carbon adsorption system.

USEPA Final Determination on Rule 09 of Chapter 3745–21. During the public comment period no comments were received on USEPA's proposed approval of paragraphs A through L, M(1), M(3), N, P, Q and S of Rule 09 of Chapter 3745–21. Therefore, USEPA approves these paragraphs. Additionally, since the comments received on paragraphs G and O do not change USEPA's initial findings, USEPA also approves these two paragraphs. USEPA has reviewed the comments received on paragraphs M(2) and R of Rule 09 and the State's response to USEPA's proposed action on paragraphs M(2) and R of Rule 09. USEPA has determined that the State has adequately committed to correct the minor deficiencies noted in paragraphs M(2) and R of 09 and that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves paragraphs (M)(2) and (R) of Rule 09 of Chapter 3745–21 on the condition that the State submits the material previously specified on the dates committed. This rule is conditionally approvable in the nonattainment areas. In the attainment areas RACT on major sources is not required. Consequently, in the attainment areas this rule is approvable. A notice soliciting public comment on the acceptability of those dates appears elsewhere in today's **Federal Register.**

3745–21–10

Section E of Rule 10 of Chapter 3745–21. This section specifies the method to be used when determining the level of VOC emissions from bulk gasoline terminals.

Public Comment: An individual expressed concern over the absence of control requirements for VOC leaks from gasoline tank trucks and vapor collection systems.

USEPA Response: In December of 1978 USEPA published a CTG for the control of VOC leaks from gasoline tank trucks and vapor collection systems. As specified in the August 28, 1979 **Federal Register** (44 FR 50371) USEPA requires the State to submit by July 1, 1980 revised regulations for sources covered by these new CTG requirements. The State has committed to submit these revised regulations. The review of these regulations will be addressed in a separate **Federal Register** notice.

Public Comment: Two commentors were concerned about the compliance test requirements for gasoline vapor recovery units presented in section E of Rule 10 of Chapter 3745–21. Specifically, they were concerned with the three eight-hour test repetitions and the annual retest. One of the commentors suggested that the rule should be revised to allow for only one-eight hour test and that the annual retest requirement should be replaced with an alternate compliance method. The second commentor suggests that the regulation should require only one two-hour test conducted during the peak loading period.

USEPA Response: USEPA believes that the three eight-hour tests specified in section E give a good representation of normal operating conditions considering the wide variation of loading conditions (number and frequency of loading), loading days, and types of processing. Therefore, USEPA believes that section E of Rule 10 should remain unchanged. It should be noted that, if at a future date, as a result of further research, information becomes available which indicates that a shorter time interval is appropriate for conducting the test, then the State may revise the regulation as necessary.

USEPA Final Determination on Rule 10 of Chapter 3745–21: USEPA has reviewed the comments submitted on this rule and has determined that none of the public comments has provided an adequate reason for USEPA to change its proposed approval. Therefore, at this time, USEPA approves in its entirety Rule 10 of Chapter 3745–21.

3745–21–04

This rule, as discussed in the March 10, 1980 **Federal Register** (45 FR 15206) is composed of three subsections (A, B, C). Subsection A establishes December 31, 1987 as the latest date for demonstrating attainment of the carbon monoxide and ozone NAAQS. Subsection B requires those sources regulated by rule 3745–21–09 to certify that they are in compliance with the rule by December 1, 1979. Section C establishes the dates for specific source categories to be in compliance with the provisions of rule 09. It also establishes an extension of these compliance dates for certain individual sources.

In the March 10, 1980 **Federal Register** USEPA stated that all the provisions of rule 04 of Chapter 3745–21 were approvable, except for the schedule contained in new rule 04(C)(18) of Chapter 3745–21 as it applies to any loading facility presently covered by the compliance schedule in old rule 04(C)(1) of Chapter 3745–21. New rule 04(C)(18) establishes the final date on which bulk gasoline terminals are to be in compliance with the provisions of new rule 09(Q) of Chapter 3745–21. This date is July 1, 1981. Old rule 04(C)(1) established the final compliance date on which bulk gasoline terminals were to be in compliance with the provisions of old rule 07(E) of Chapter 3745–21. The date, as codified in 40 CFR 52.1875 was to be no later than July, 1975 and in some cases by May 31, 1975.

USEPA noted that new rule 09(Q) and the old rule 07(E) require installation of the same control systems to achieve compliance with their VOC emission limitations. Therefore, certain facilities covered under old rule 07(E) would be granted an additional six years to be in compliance with new rule 09(Q). This extension in the compliance schedule was unacceptable. Therefore, USEPA proposed to disapprove the compliance schedule in revised new rule 04(C)(18) as it applies to facilities presently covered by the compliance schedule in old rule 04(C)(1).

Public Comment: One commentor, a representative of an oil company, believes that the date for certification of compliance (December 1, 1979) contained in new rule 04(B) of Chapter 3745–21 does not allow sufficient time for planning and that the date should be changed to "no later than 90 days after approval or final promulgation of these regulations."

USEPA Response: The date selected by the State is consistent with USEPA policy as outlined in 40 CFR 51.15 and 40 CFR 51.1(q) and therefore is approvable.

Public Comment: One commentor, a representative for numerous oil companies, submitted extensive comments on USEPA'a proposed disapproval of the compliance schedule contained in new rule 04(C)(18). The commentor raises three significant issues. A summary of these issues is presented below:

1. The commentor notes that old rule 07(E)(1)(c) allows for the installation of "other equipment or means for purposes of air pollution control as may be acceptable to and approved by the Board." On March 9, 1973, the Director of the Ohio EPA issued a Resolution, pursuant to this rule, which provides

that "[b]ottom loading or fully submerged loading is hereby approved as an acceptable means of controlling hydrocarbon emissions under rule 3745–21–04(E)(1)(c)." (The Director of Ohio EPA is the successor to the Ohio Air Pollution Control Board.) Under the authority of this resolution the State has issued Permits to Operate for bulk gasoline loading terminals which use fully submerged or bottom loading systems as a means of internal vapor control.

The commentor notes that for sources which installed this alternate control equipment, as opposed to the equipment specified in 3745–21–07(E)(1)(a) or (b), additional time is needed to meet the requirements of new rule 09(Q) of Chapter 3745–21. He states further that a fuller statement of the policy issues and law involved in this question is set forth in the oil companies' filings in two court cases that are pending in the United States District Court for the Northern District of Ohio, Eastern District. He notes that USEPA should take no action inconsistent with the decision of the court in those two cases.

2. The commentor states that even if USEPA's interpretation of old rule 3745–21–07(E) is correct, additional time would still be needed for those sources which were in compliance with the provisions of the old rule to meet the requirements of new rule 3745–21–09(Q). He contends that the additional time is necessary because these sources would have to install additional equipment to meet the more stringent emission limitations of new rule 09(Q) of Chapter 3745–21.

3. Finally, the commentor states that even if USEPA were correct that the RACT requirements of new rule 09(Q) were identical to the requirements of old rule 07(E), that is not a sufficient basis for disapproving rule 04(C)(18) of Chapter 3745–21, which establishes a compliance schedule with a final date of July 1, 1981. He contends that in the past USEPA has approved SIP revisions or variances extending a final compliance date and that a State can revise its SIP to provide a different compliance date for a particular source or class of sources.

USEPA Response: USEPA's response to each of the above mentioned issues is presented below.

1. It is USEPA's judgment that the March 9, 1973 Resolution (hereinafter referred to as the Resolution), which authorizes the use of bottom fill or submerged loading systems which do not collect or dispose of vapors as alternate control methods, constitutes a revision to the SIP. Section 110 of the Clean Air Act requires the State to submit such revisions to USEPA for review and approval. Until such a revision is approved the existing SIP is the federally enforceable SIP and all sources must adhere to its provisions. In the case under discussion the State of Ohio never officially submitted to USEPA the Resolution as a revision to the SIP. Therefore, old rule 07(E)(1)(a) and (b) of Chapter 3745–21 as approved on April 15, 1974, is the federally enforceable regulation with which the sources must be in compliance.

In response to the commentor's concern that USEPA should not take final rulemaking action prior to the U.S. District Court's decision in two cases currently pending, USEPA would like to point out that final rulemaking cannot be withheld until the court has made a decision in these cases. USEPA is mandated by the Clean Air Act to take final action on revisions to the SIP within a specified timeframe regardless of pending litigation. Using the pendancy of litigation as a basis for not acting on revisions to an SIP would potentially promote frivolous litigation to delay SIP action and jeopardize the attainment and maintenance of standards. Once a court has rendered its decisions in a case, the appropriate steps can be taken, if necessary, to have the SIP reflect the court's decisions.

2. USEPA has reviewed both the old rule and the new rule to determine if the new rule is more stringent. Under old rule 07(E) a vapor collection and disposal system is required. This system is required to process and recover from the equipment being controlled at least 90% by weight of all vapor and gases. The new rule 09(Q) specifies an allowable emission limitation of 0.67 lbs. VOC/1000 gallons of gasoline loaded into the delivery vessel. Under the new rule a vapor collection and control is also specified as the means for controlling the VOC emissions.

Tests conducted by USEPA indicate that it is possible for a vapor collection system achieving less than a ninety percent control efficiency to meet the emission limitation of 0.67 lbs. VOC/1000 gallons of gasoline. In USEPA's judgment, for those sources which met the requirements of old rule 07(E), the emissions limitations specified in new rule 09(Q) are not more stringent. Furthermore, since both old rule 07(E) and new rule 09(Q) require the same control equipment, USEPA does not believe that there is a need for additional time to demonstrate compliance with new rule 09(Q).

3. When rulemaking on regulations which apply to all sources in a particular category (i.e. bulk gasoline terminals) USEPA will not approve the extension of final compliance dates when the substantive requirements of the regulation are the same or less stringent than the requirements of an existing federally approved rule. As stated previously, USEPA believes that the substantive requirements of old rule 07(E) and new rule 09(Q) are essentially the same. Therefore on a categorical basis USEPA does not believe it is appropriate to give a blanket extension to those sources formerly covered by old rule 04(C)(1).

It should be noted however, that on a source specific basis, the State can request an extension based on the fact that the specific source, which met the requirements of old rule 07(E) needs additional time to install additional equipment to meet the requirements of the new rule 09(Q). In such a case the source must demonstrate that it was in compliance with the old regulation and needs extra time to install additional equipment that is needed for the source to comply with new rule 09(Q). Otherwise, to allow sources that were not in compliance with the old regulation, an extension, would negate the impact of section 120 of the Act and the intent of Congress.

State Response: On April 15, 1980, the State submitted objections on USEPA's proposed disapproval of the compliance date in new rule 04(C)(18). The State indicated that it believes that the requirements of new rule 09(Q) are more stringent than the requirements of old rule 07(E). Therefore, the State felt that the compliance time extension was justified. The State based its justification for an extension on the following three premises:

(a) USEPA's Enforcement Division was aware of the March 9, 1973 Resolution allowing the use of either bottom loading or submerged filling as sufficient to comply with the old regulation.

(b) The new rule specifies an emission limitation which is more stringent than the collection efficiency specified in the old rule.

(c) The method of determining compliance with the new regulation is more extensive than the method used for the old regulation (no test method was specified for determining compliance with the old regulation).

USEPA Response: Arguments a and b presented by the State are essentially identical to arguments 1 and 2 presented above by the oil company representative. For USEPA's response to these issues the reader is referred to the discussion presented above. As for the issue presented in point C, USEPA maintains that such a blanket extension is not approvable because the

requirements of new rule 09(Q) of Chapter 3745–21 are essentially the same as, and are not more stringent than the requirements of old rule 07(E) of Chapter 3745–21. USEPA does not believe that the new compliance testing methodology will prevent a source, that was in compliance with the old regulation, from complying with the requirements of new rule 09(Q).

USEPA Final Determination on Rule 3745–21–04

USEPA has reviewed the comments received from the State and private industry and has determined that adequate reasons have not been provided for USEPA to change its original proposal on new rule 04. Therefore, at this time, USEPA approves all portions of rule 04 of Chapter 3745–21 except for the following:

(1) USEPA disapproves the compliance schedule in revised rule 04(C)(18) of Chapter 3745–21 as it applies to facilities formerly covered by the compliance schedule in old rule 04(C)(1) of Chapter 3745–21.

The 1978 edition of 40 CFR Part 52 lists in the subpart for each state the applicable deadlines for the attaining ambient standards (attainment dates) required by section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides for attainment by the deadline required by section 172(a) of the Act, the new deadlines will be substituted on the attainment date charts. The earlier attainment dates under section 110(a)(2)(A) will be referenced in a footnote to the charts. Sources subject to plan requirements and deadlines established under section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new section 172 plan requirements.

Congress established new deadlines under section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. If these new deadlines were permitted to supersede the deadlines established prior to the 1977 Amendments, sources that failed to comply with pre-1977 plan requirements by the earlier deadlines would improperly receive more time to comply with those requirements. Congress, however, intended that the new deadlines apply only to new, additional control requirements and not to earlier requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

> Section 110(a)(2) of the Act made clear that each source has to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D.
>
> (123 Cong. Rec., H 11958, daily ed. November 1, 1977)

To implement fully Congress' intention that sources remain subject to pre-existing plan requirements, sources, cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. Such variances would impermissibly relax existing requirements beyond the applicable section 110(a)(2)(A) attainment date under the plan. Therefore, for requirements adopted before the 1977 Amendments, USEPA will not approve a compliance date extension beyond pre-existing 110(a)(2)(A) attainment dates, even though a section 172 plan revision with a later attainment date has been approved.

However, in certain exceptional circumstances, extensions beyond a pre-existing attainment date are permitted. For example, if a section 172 plan imposes new, more stringent control requirements that are incompatable with controls required to meet the pre-existing regulations, the pre-existing requirements and deadlines may be revised if a State makes a case-by-case demonstration that a relaxation or revocation is necessary. Any such exemption granted by a State will be reviewed and acted upon by USEPA as a SIP revision. In addition, as discussed in the April 4, 1979 **Federal Register** (44 FR 20373), an extension may be granted if it will not contribute to a violation of an ambient standard or a PSD increment.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit by (within 60 days of today). Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by USEPA to enforce these requirements.

Under Executive Order 12044, USEPA 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. USEPA 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.

This Notice of Final Rulemaking is issued under the authority of sections 110(a), 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410(a), 7502, 7601(a)).

Dated: October 23, 1980.

Douglas Costle,

Administrator.

Note.—Incorporation by reference of the State implementation Plan for the State of Ohio was approved by the Director of the **Federal Register** on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

(1) Section 52.1870(c) is amended by adding subparagraphs (14) to (20) to read as follows:

§ 52.1870 Identification of Plan.

* * * * *

(c) * * *

(14) On July 27, 1979 the State submitted its nonattainment area plan for specific areas designated as nonattainment for ozone and carbon monoxide in the March 3, 1978 and October 5, 1978 **Federal Registers** (43 FR 8962 and 43 FR 45993). The submittal contained Ohio's Part D nonattainment plans for the following ozone and carbon monoxide urban nonattainment areas: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Steubenville and Toledo. The submittal contained transportation control plans and demonstrations of attainment (for carbon monoxide and/or ozone) for each of the above mentioned urban nontattainment areas. Regulations for the control of volatile organic compound emissions were not included with this submittal but were submitted separately on September 13, 1979.

(15) On September 13, 1979, the State submitted regulations for the control of volatile organic compound and carbon monoxide emissions from stationary sources.

(16) On December 28, 1979, the State amended the attainment demonstration submitted on July 27, 1979 for the Cleveland urban area.

(17) On January 8, 1980, the State amended the carbon monoxide attainment demonstration submitted on July 27, 1979 for the Steubenville urban area.

(18) On January 15, 1980, the State amended the attainment demonstrations submitted on July 27, 1979 for the urban areas of Cincinnati, Toledo and Dayton.

(19) On April 7, 1980 the State of Ohio committed to correct the deficiencies presented in the March 10, 1980 Notice of Proposed Rulemaking.

(20) On April 15, 24, 28, May 27, July 23 and August 6, 1980 the State submitted comments on, technical support for, and commitments to correct the deficiencies cited in the March 10, 1980 Notice of Proposed Rulemaking. In addition to this the May 27, 1980 letter also contained a commitment by the State to adopt and submit to USEPA by each subsequent January, reasonable available control technology requirements for sources covered by the control techniques guidelines published by USEPA the preceding January.

§ 52.1871 [Amended]

2. Section 52.1871 is amended by changing the heading "Photochemical Oxidants (hydrocarbons)" to "Ozone".

3. Section 52.1873 is revised to read as follows:

§ 52.1873 Approval Status.

With the exceptions set forth in this subpart the Administrator approves its plan Ohio's plan for the attainment and maintenance of the National Ambient Air Quality Standards under Section 110 of the Clean Air Act. Furthermore, the Administrator finds the plan satisfies all the requirements of Part D, Title 1 of the Clean Air Act as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

4. Section 52.1875 is amended to delete paragraph (b) and revise paragraph (a) as follows:

§ 52.1875 Attainment Dates for National Standards.

(a) The following table presents the latest date by which the national standards are to be attained. These dates reflect the information presented in Ohio's plan, except where noted.

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon-monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Greater Metropolitan Cleveland Intrastate (AQCR 174):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	e	c
b. Remainder of AQCR	b	b	b	b	b	b	b
Huntington (West Virginia)-Ashland (Kentucky)-Portsmonth-Ironton (Ohio) Intrastate (AQCR 103):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Mansfield-Marion-Intrastate (AQCR 175):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Cincinnati Interstate (AQCR 079):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	g	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Columbus Interstate (AQCR 176):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Dayton Interstate (AQCR 173):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Toledo Interstate (AQCR 124):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	g	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Northwest Ohio Interstate (AQCR 177):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Northwest Pennsylvania Youngstown Interstate (AQCR 178):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Parkersburg (West Virginia)-Marietta (Ohio) Interstate:							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	b
b. Remainder of AQCR	b	b	b	b	b	b	b
Sundusky Intrastate (AQCR 180):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Steubenville-Wierton-Wheeling Interstate (AQCR 181):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Wilmington-Chillicothe-Logan Intrastate (AQCR 182):							
a. Primary/secondary nonattainment areas	h	h	b	b	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Zanesville-Cambridge Intrastate (AQCR 183):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b

NOTE.—Sources subject to the plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with these requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.1875 published July 1, 1979.

For actual nonattainment designations refer to 40 CFR Part 81.

Dates or footnotes which are italicized are prescribed by the Administrator because the plan did not provide a specific date or the date provided was not acceptable.

a. Air quality levels presently below primary standards or is unclassifiable.

b. Air quality levels presently below secondary standards or is unclassifiable.

c. For Stark, Summit and Portage Counties attainment is to be achieved by December 31, 1982. For the remaining counties the attainment date will be specified in the future.

d. December 31, 1982.

e. For Summit County attainment is to be achieved by December 31, 1982. For Cuyahoga County the attainment date will be specified in the future.

f. August 27, 1979 except for the companies listed in (1) which are subject to an attainment date of June 17, 1980, the Ashland Oil Company in Stark County which is subject to an attainment date of September 14, 1982, the companies in Summit County listed in (2) which are subject to an attainment date of January 4, 1983, and the PPG Industries, Inc. (boilers only) in Summit County, Ohio which is subject to an attainment date of August 25, 1983.

(1) Youngstown Sheet & Tube Co.; PPG Industries, Inc.; Wheeling-Pittsburgh Steel Corp.; Pittsburgh-Canfield Corporation; The Timken Company; The Sun Oil Co.; Sheller-Globe Corp.; The B. F. Goodrich Company; Phillips Petroleum Co.; Shell Oil Co.; Federal Paper Board Co.; The Firestone Tire & Rubber Co.; Republic Steel Corp.; Chase Bag Co.; White-Westinghouse Corp.; U.S. Steel Corp.; Interlake, Inc.; Austin Power Co.; Diamond Crystal Salt Co.; The Goodyear Tire & Rubber Co.; The Gulf Oil Co.; The Standard Oil Co.; Champion International Corp.; Koppers Co., Inc.; General Motors Corp.; E. I. du Pont de Nemours and Co.; Coulton Chemical Corp.; Allied Chemical Corp.; Specialty Chemicals Division; The Hoover Co.; Aluminum Co. of America; Ohio Greenhouse Assoc.; Armco Steel Corp.; Buckeye Power, Inc.; Cincinnati Gas and Electric; Cleveland Electric Illuminating Co.; Columbus and Southern Ohio Electric; Dayton Power and Light Co.; Duquesne Light Co.; Ohio Edison Co.; Ohio Electric Co.; Pennsylvania Power Co.; Toledo Edison Co.; Ohio Edison Co.; RCA Rubber Co.

(2) In Summit County; Diamond Crystal Salt; Firestone Tire & Rubber Co.; General Tire & Rubber; B.F. Goodrich, Co.; Goodyear Aerospace Corp.; Goodyear Tire & Rubber Co.; Chrysler Corp.; PPG Industries, Inc.; Seiberling Tire & Rubber; Terex Division of General Motors Corp.; Midwest Rubber Reclaiming; Kittinger Supply Co.

g. Attainment date will be specified in the future.

h. April 15, 1977.

i. December 31, 1987.

5. Section 52.1885 is revised to read as follows:

§ 52.1885 Control Strategy: Ozone.

(a) Part D—Approval—The following portions of the Ohio plan are approved:

(1) The ozone portions of rules 01, 02, 03, 04 (except the portion disapproved below), 05, 06, 07, 08, 09 (except the portions conditionally approved below) and 10 of Chapter 3745–21 of the Ohio Administrative Code.

(2) The Attainment Demonstrations for the following urban areas: Akron, Cincinnati, Dayton and Toledo.

(3) The Reasonable Further Progress Demonstration for the following areas: Akron, Cincinnati, Cleveland, Columbus, Dayton and Toledo.

(b) Part D—Conditional Approval—The following portions of the Ohio plan are approved provided that the following conditions are satisfied:

(1) For Rule 09(M)(2) of Chapter 3745–21 of the Ohio Administrative Code the State promulgate and submit to USEPA regulations which meet the RACT requirements for waste water separators. If these regulations contain exemptions which are not supported by the CTGs then the State must demonstrate that the resultant emissions differ from the CTG allowable emissions by not more than five percent.

(2) For Rule 09(R) of Chapter 3745–21 of the Ohio Administrative Code the State either demonstrates that allowable emissions resulting from the application of its existing rule with a 240,000 gallon per year throughput exemption for gasoline dispensing facilities are less than five percent greater than the allowable emissions resulting from the application of the CTG presumptive norm or promulgates and submits to USEPA a rule with a 120,000 gallon per year throughput exemption for gasoline dispensing facilities.

(3) The attainment demonstrations for the urban areas of Canton, Cleveland and Columbus provided the deficiencies cited in § 52.1886 are corrected.

(4) The Reasonable Further Progress Demonstration for the urban areas of Canton and Steubenville provided the deficiencies cited in § 52.1886 are corrected.

(c) Disapproval—USEPA disapproves the compliance schedule in revised rule 04(c)(18) of Chapter 3745–21 of the Ohio Administrative Code as it applies to facilities formerly covered by the compliance schedule in old rule 04(c)(1) of Chapter 3745–21. This disapproval in and of itself does not result in the growth restrictions of section 110(a)(2)(I).

(d) Part D—No Action—USEPA at this time takes no action on the vehicle inspection and maintenance (I/M) program required for those non-attainment areas which have requested an extension to demonstrate ozone attainment.

6. Section 52.1886 is revised as follows:

§ 52.1886 Ozone Attainment and Reasonable Further Progress Demonstrations.

(a) Part D—Conditional Approval—The attainment demonstration for the Canton urban area is approved provided that the following conditions are satisfied.

(1) The State submit either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

(2) The State submit a revised RFP demonstration line to account for any changes made in the attainment demonstrations.

(b) Part D—Conditional Approval—The attainment demonstration for the Cleveland urban area is approved provided the following conditions are satisfied:

(1) The State submits either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

(2) The State submits a list of the additional Transportation Systems Management Strategies to be implemented with the additional point source regulations will demonstrate attainment of the ozone standard.

(3) The State submits a schedule which delineates the dates on which the additional point source controls will be developed and implemented.

(c) Part D—Conditional Approval—The attainment demonstrations for the Columbus urban area is approved provided the following conditions are satisfied:

(1) The State submits either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

(d) Part D—Conditional Approval—The reasonable further progress (RFP) demonstrations for the Canton and Steubenville urban areas are approved

provided the State submits revised RFP demonstration lines.

7. Section 52.1887 is revised to read as follows:

§ 52.1887 Control Strategy: Carbon Monoxide.

(a) Part D—Approval—The following portions of the Ohio plan are approved:

(1) The carbon monoxide portions of rules 01, 02, 03, 04 (except the portion disapproved in § 52.1877(c)), 05, 06, 07, 08, 09 (except the portions conditionally approved in § 52.1877(b)) and 10 of Chapter 3745–21 of the Ohio Administrative Code.

(2) The transportation control plans for the following urban areas: Akron (ozone component only), Canton, Cincinnati, Columbus, Dayton, Steubenville, Toledo (ozone component only), Cleveland.

(3) The carbon monoxide attainment and reasonable futher progress demonstrations for the following urban areas: Cincinnati, Cleveland and Columbus.

(b) Part D—Conditional Approval—The following portions of the Ohio plan are approved provided the following conditions are met:

(1) For the Dayton urban area carbon monoxide attainment and reasonable further progress demonstrations the State must submit the following:

(i) A schedule for the study, evaluation and implementation of control measures at the identified carbon monoxide hot spot;

(ii) Evidence of priority funding, if proven necessary; and

(iii) A revised carbon monoxide reasonable further progress demonstration.

(2) For the Steubenville urban area carbon monoxide attainment and reasonable further progress demonstrations the State must submit the following:

(i) The results of the carbon monoxide study;

(ii) Submit either regulations or additional TSMs which will provide for attainment of the standard by December 31, 1982; and

(iii) A revised attainment demonstration.

(iv) A revised carbon monoxide reasonable further progress demonstration.

(c) Part D—No Action—USEPA at this time takes no action on the carbon monoxide portions of the plan submitted for the urban areas of Akron and Toledo nor on the vehicle inspection and maintenance (I/M) program required for those nonattainment areas which have requested an extension to demonstrate carbon monoxide attainment.

[FR Doc. 80-33875 Filed 10-30-80; 8:45 am]

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40 CFR Part 52

[A-5-FRL 1647-3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA announces today final rulemaking on revisions to the carbon monoxide and ozone portions of the Ohio State Implementation Plan (SIP) for the Youngstown urban area and Ohio's rural ozone nonattainment areas. A notice of proposed rulemaking on these revisions was published in the May 16, 1980 **Federal Register** (45 FR 32333). In that notice, USEPA proposed to approve these revisions provided that the State correct or commit itself to correct specific deficiencies. On June 12, 1980 and August 6, 1980, the State submitted information and commitments to correct the noted deficiencies. Based on USEPA's review of the State's response, USEPA is today approving the SIP for the rural ozone nonattainment areas and conditionally approving the SIP revisions for the Youngstown urban area.

EFFECTIVE DATE: This final rulemaking becomes effective on October 23, 1980. For further information see Supplementary Information.

ADDRESSES: Copies of the SIP revision, public comments on the NPR, and USEPA's evaluation and response to comments are available for inspection at the following addresses:

U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clarizio, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act), as amended in 1977, USEPA designated certain areas in Ohio as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO) and ozone (O_3).

Part D of the Act, which was added by the 1977 Amendments, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary standard as expeditiously as practicable, but not later than December 31, 1982. In certain circumstances an extension is provided to no later than December 31, 1987 to demonstrate attainment of the ozone or carbon monoxide NAAQS.

The requirements for an approvable SIP are described in a **Federal Register** notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

The Youngstown urban area plan relies on the control of the emission of volatile organic compounds (VOC) from stationary and mobile sources to provide for the attainment of the ozone standard by December 31, 1982. To provide for attainment of the carbon monoxide NAAQS by December 31, 1982, the Youngstown plan relies on mobile source control measures to reduce carbon monoxide emissions.

USEPA stated in the May 16, 1980 **Federal Register** that the Youngstown urban area plan which was submitted on December 28, 1979 and amended on February 12, 1980, adequately demonstrates attainment of both the carbon monoxide and ozone NAAQS by December 31, 1982. USEPA, however, identified deficiencies in the ozone attainment and reasonable further progress demonstrations and in the transportation control plan. Consequently, USEPA proposed to conditionally approve the Youngstown urban area plan, if, prior to final rulemaking, the State either adequately corrected these deficiencies or committed itself to correct these deficiencies on a negotiated schedule. Additionally, in the May 16, 1980 **Federal Register** USEPA proposed to

approve Ohio's rural area ozone nonattainment SIP.

A discussion of conditional approval and its practical effect appears in the July 2, 1979 **Federal Register** (44 FR 38583). A conditional approval requires the State to submit additional materials by the specified deadlines negotiated between the State and the USEPA Regional Office. Schedules submitted by Ohio for the Youngstown SIP revision will be proposed for public comment elsewhere in today's **Federal Register.** Prior to final rulemaking on the deadlines, the State is bound by its commitment to meet the proposed deadlines. USEPA will follow the procedures described below when determining if requirements of conditional approval have been met.

1. When a State submits the required additional documentation, USEPA will publish a notice in the **Federal Register** announcing receipt and availability of the submission and that the conditional approval is continuing pending USEPA's final action on the submission.

2. USEPA will evaluate the State's submission and public comment on the submission to determine if noted deficiencies have been fully corrected. After review is complete, a **Federal Register** notice will either fully approve the plan if all conditions have been met, or withdraw the conditional approval and disapprove the plan. If the plan is disapproved, the Section 110(a)(2)(I0) restrictions on construction will be in effect.

3. If the State fails to submit the required materials according to the negotiated schedule, USEPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved, and the Section 110(a)(2)(I) restrictions on growth are in effect.

Only the State submitted comments on the notice of proposed rulemaking. The State submitted additional information on June 12, 1980, and a revised schedule for the submittal of the corrective material on August 6, 1980.

Summarized below are the deficiencies cited in the May 16, 1980 **Federal Register,** the State's response to these deficiencies, USEPA's evaluation of the adequacy of the State's response, and USEPA's final rulemaking on the Youngstown urban area plan and the rural area ozone nonattainment area SIP revision.

Ozone Attainment Demonstration—Emission Reduction Estimates: In the ozone attainment demonstration, a 100% reduction in volatile organic compounds (VOC) emissions from the cutback asphalt category is predicted to occur by December 31, 1982. In the May 16, 1980 **Federal Register,** USEPA questioned the accuracy of this prediction given the possible continued usage of cutback asphalt. USEPA requested either technical support for this emission reduction estimate or a re-evaluation of the baseline emissions to account for the VOC emissions resulting from this category.

State Response: The State indicated that it will conduct a survey on anticipated annual usage of cutback asphalt for the April–October period. In a letter dated June 12, 1980 the State noted that the results of the survey would be submitted to USEPA by November 3, 1980. Subsequently, the State, determined that due to limited staff resources additional time would be needed. On August 6, 1980 the State committed itself to submit the required information by August 1, 1981.

USEPA Response: USEPA believes that both the State's commitment and schedule, as contained in the August 6, 1980 letter are acceptable. A notice soliciting public comment on the acceptability of the August 1, 1981 date for the submittal of the results of the survey appears elsewhere in today's **Federal Register.**

Ozone Attainment Demonstration—VOC Emissions Inventory (Other Solvent Usage Category): When developing the VOC emissions inventory, the State projected that the emissions from the Other Solvent Usage Category would be identical in the years 1975, 1982 and 1987. USEPA noted in the May 16, 1980 **Federal Register** that emissions from this source category are dependent upon the population of the area and generally increase or decrease when the population increases or decreases. Additionally, USEPA indicated that an increase in VOC emissions from this source category should have been predicted, since the plan projects the population would increase in 1982 and 1987. USEPA stated that the State could correct this error either by revising the emissions inventory to account for the increased emissions or by re-examining and revising the population projections.

State Response: On June 12, 1980, the State submitted a revised VOC emissions inventory for the years 1982 and 1987. This revised inventory projected increases in the VOC emissions from the Other Solvent Usage Category due to projected population increases in the area.

USEPA Response: USEPA has reviewed the State's revised emissions inventory and has determined that it is adequate to correct the noted deficiency. Furthermore, USEPA has determined that the predicted increase in emissions from the Other Solvent Usage Category will not interfere with the ability of the area to attain the ozone NAAQS by December 31, 1982.

Transportation Control Plan (TCP)—Implementor Commitments: One of the requirements for an acceptable TCP is that it contains commitments from the Regional Policy Board to meet specific annual emission reduction goals. As noted in the May 16, 1980 **Federal Register,** the Youngstown TCP does not contain such commitments.

State Response: The State said in the June 12, 1980 letter that it would submit the necessary commitments to USEPA by November 3, 1980. The State affirmed its commitment to the November 3, 1980 date in an August 6, 1980 letter.

USEPA Response: USEPA believes that both the State's commitment and schedule, as contained in the August 6, 1980 letter, are acceptable. A notice soliciting public comment on the acceptability of the November 3, 1980 date for the submission of the Implementor Commitments appears elsewhere in today's **Federal Register.**

Demonstration of Reasonable Further Progress (RFP) for Ozone: In the May 16, 1980 **Federal Register,** USEPA pointed out that the original ozone RFP line must be revised to account for the change in the base year from 1975 to 1977 and to account for any change in the emissions inventory due to any revised VOC estimates for the Cutback Asphalt and Other Solvent Usage Categories.

State Response: In its June 12, 1980 letter, the State said that it would revise and submit the ozone RFP demonstration by November 3, 1980. In its August 6, 1980 letter, the State reported that it needed additional time, until August 1, 1981, to submit the revised ozone RFP demonstration. Therefore, the State committed itself to submit the revised ozone RFP demonstration by August 1, 1981.

USEPA Response: USEPA believes that both the State's commitment and schedule as contained in its August 6, 1980 letter are acceptable. A notice soliciting public comment on the acceptability of the August 1, 1981 date for the submission of the revised ozone RFP demonstration appears elsewhere in today's **Federal Register.**

USEPA Final Determination on the Youngstown Urban Area Plan: USEPA believes that the State has adequately corrected the VOC emissions inventory to account for the deficiency in the Other Solvent Usage Category. Furthermore, USEPA believes that the commitments made by the State to correct the deficiencies in the ozone

attainment and RFP demonstrations and the transportation control plan are adequate for a conditional approval. Therefore, USEPA conditionally approves these portions of the Youngstown urban area plan. Additionally, since no comments were received questioning USEPA's proposed approval of the carbon monoxide attainment and RFP demonstration portion of the youngstown urban area plan, USEPA finally approves these portions.

Rural Area Ozone Nonattainment Plan: In the May 16, 1980 **Federal Register,** USEPA stated that for the rural ozone nonattainment areas a specific demonstration of attainment and reasonable further progress is not necessary. The April 4, 1979 **Federal Register** specifies that reasonably available control technology (RACT) at major stationary sources of hydrocarbons in rural areas and a demonstration of attainment in all urban areas will assure attainment and reasonable further progress in the rural areas. Since the Ohio carbon monoxide and ozone SIP revisions satisfy these requirements, USEPA proposed to approve the ozone nonattainment area plan for the following rural ozone nonattainment counties: Lawrence, Clinton, Brown, Highland, Fayette, Ross, Pickaway, Hocking, Perry, Fairfield, Madison, Licking, Belmont, Champaign, Shelby, Logan, Union, Ottawa, Fulton, Delaware, Knox, Holmes, Tuscarawas, Harrison, Carroll, Columbiana, Ashtabula, Wayne, Ashland, Richland, Morrow, Marion, Allen, Hancock, Seneca, Huron, Erie, Sandusky, and Henry.

No comments were received during the public comment period on USEPA's proposed approval of the ozone nonattainment area plan for these rural ozone nonattainment counties. Therefore, USEPA approves the ozone nonattainment area plan in these counties.

USEPA has determined that good cause exists for making this final rulemaking immediately effective. By making this final rulemaking immediately effective, the restrictions on industrial growth contained in section 110(a)(2)(I) of the Act could be lifted in some areas of the State of Ohio if all other requirements are met. These restrictions are imposed for a failure to have a State Implementation Plan which meets the requirements of Part D after the final date for SIP approval specified in the Act. The U.S. EPA has determined that for the Youngstown urban area and the rural ozone nonattainment areas, the Ohio carbon monoxide and ozone SIP meets the requirements of Part D. Therefore, it would be contrary to public interest to continue for thirty days after the publication of this notice the restrictions on industrial growth for certain sources located within, or wishing to locate within these areas.

The 1978 edition of 40 CFR Part 52 lists in the subpart for each State, the applicable deadlines for attaining ambient standards (ambient dates) required by section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides attainment by the deadline required by section 172(a) of the Act, the new deadlines will be substituted on the attainment date charts. The earlier attainment dates under section 110(a)(2)(A) will continue to appear in a footnote to the earlier charts. Sources subject to plan requirements and deadlines established under section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new section 172 plan requirements.

Congress established new deadlines under section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. If these new deadlines were permitted to supersede the deadlines established prior to the 1977 Amendments, sources that failed to comply with pre-1977 plan requirements by the earlier deadlines would improperly receive more time to comply with those requirements. Congress, however, intended that the new deadlines apply only to new, additional control requirements and not to earlier requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

> Section (a)(2) of the Act made clear that each source has to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D.
>
> (123 Cong. Rec., H 11958, daily, ed. November 1, 1977)

To comply fully with the intent of Congress that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. Such variances would impermissibly relax existing requirements beyond the applicable section 110(a)(2)(A) attainment date under the plan. Therefore, for requirements adopted before the 1977 Amendments, USEPA will not approve a compliance date extension beyond pre-existing 110(a)(2)(A) attainment dates, even though a section 172 plan revision with a later attainment date has been approved.

However, in certain exceptional circumstances, extensions beyond a pre-existing attainment date are permitted. For example, if a section 172 plan imposes new, more stringent control requirements that are incompatible with controls required to meet the pre-existing regulations, the pre-existing requirements and deadlines may be revised if a State makes a case-by-case demonstration that a relaxation or revocation is necessary. Any such exemption granted by a State will be reviewed and acted upon by USEPA as a SIP revision. In addition, as discussed in the April 4, 1979 **Federal Register** (44 FR 20373), an extension may be granted if it will not contribute to a violation of an ambient standard or a PSD increment.

Under Section 307(b)(1) of the Clean Air Act, judicial review of (this action) is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit by December 30, 1980. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by USEPA to enforce these requirements.

Under Executive Order 12044, USEPA 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. USEPA 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.

This Notice of Final Rulemaking is issued under the authority of Sections 110(a), 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410(a), 7502, 7601(a)).

Dated: October 23, 1980.

Douglas Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the **Federal Register** on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

1. Section 52.1870(c) is amended by adding subparagraphs (21) to (22) to read as follows:

§ 52.1870 Identification of Plan.

* * * * *

(c) * * *

(21) On December 28, 1979 the State of Ohio submitted its Part D carbon monoxide and ozone nonattainment area plan for the Youngstown urban area. The submittal contained transportation control plans and demonstrations of attainment (for carbon monoxide and/or ozone). On February 12, 1980 the State amended the ozone attainment demonstration submitted on December 28, 1979.

(22) On June 12, 1980 and August 6, 1980 the State submitted comments on, technical support for, and commitments to correct the deficiencies cited in the May 16, 1980 Notice of Proposed Rulemaking.

§ 52.1871 [Amended]

2. Section 52.1871 is amended by changing the heading "Photochemical Oxidants (hydrocarbons)" to "Ozone".

3. Section 52.1873 is revised to read as follows:

§ 52.1873 Approval Status.

With the exceptions set forth in this subpart the Administrator approves Ohio's plan for the attainment and maintenance of the National Ambient Air Quality Standards under Section 110 of the Clean Air Act. Furthermore, the Administrator finds the plan satisfies all the requirements of Part D, Title 1 of the Clean Air Act as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

4. Section 52.1875 is amended to delete paragraph (b) and revise paragraph (a) as follows:

§ 52.1875 Attainment Dates for National Standards.

(a) The following table presents the latest date by which the national standards are to be attained. These dates reflect the information presented in Ohio's plan, except where noted.

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Greater Metropolitan Cleveland Intrastate (AQCR 174):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	e	c
b. Remainder of AQCR	b	b	b	b	b	b	b
Huntington (West Virginia)-Ashland (Kentucky)-Portsmouth-Ironton (Ohio) Intrastate (AQCR 103):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Mansfield-Marion-Intrastate (AQCR 175):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Cincinnati Interstate (AQCR 079):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	g	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Columbus Intrastate (AQCR 176):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Dayton Intrastate (AQCR 173):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Toledo Interstate (AQCR 124):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	g	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Northwest Ohio Intrastate (AQCR 177):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Northwest Pennsylvania Youngstown Interstate (AQCR 178):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Parkersburg (West Virginia)-Marietta (Ohio) Interstate:							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	b
b. Remainder of AQCR	b	b	b	b	b	b	b
Sandusky Intrastate (AQCR 180):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Steubenville-Wierton-Wheeling Interstate (AQCR 181):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Wilmington-Chillicothe-Logan Intrastate (AQCR 182):							
a. Primary/secondary nonattainment areas	h	h	b	b	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Zanesville-Cambridge Intrastate (AQCR 183):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b

NOTE.—Sources subject to the plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with these requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.1875 published July 1, 1979.

For actual nonattainment designations refer to 40 CFR Part 81.

Dates or footnotes which are italicized are prescribed by the Administrator because the plan did not provide a specific date or the date provided was not acceptable.

a. Air quality levels presently below primary standards or is unclassifiable.

b. Air quality levels presently below secondary standards or is unclassifiable.

c. For Stark, Summit and Portage Counties attainment is to be achieved by December 31, 1982. For the remaining counties the attainment date will be specified in the future.

d. December 31, 1982.

e. For Summit County attainment is to be achieved by December 31, 1982. For Cuyahoga County the attainment date will be specified in the future.

f. August 27, 1979 except for the companies listed in (1) which are subject to an attainment date of June 17, 1980, the Ashland Oil Company in Stark County which is subject to an attainment date of September 14, 1982, the companies in Summit County listed in (2) which are subject to an attainment date of January 4, 1983, and the PPG Industries, Inc. (boilers only) in Summit County, Ohio which is subject to an attainment date of August 25, 1983.

(1) Youngstown Sheet & Tube Co.; PPG Industries, Inc.; Wheeling-Pittsburgh Steel Corp.; Pittsburgh-Canfield Corporation; The Timken Company; The Sun Oil Co.; Sheller-Globe Corp.; The B.F. Goodrich Company; Phillips Petroleum Co.; Shell Oil Co.; Federal Paper Board Co.; The Firestone Tire & Rubber Co.; Republic Steel Corp.; Chase Bag Co.; White-Westinghouse Corp.; U.S. Steel Corp.; Interlake, Inc.; Austin Power Co.; Diamond Crystal Salt Co.; The Goodyear Tire & Rubber Co.; The Gulf Oil Co.; The Standard Oil Co.; Champion International Corp.; Koppers Co., Inc.; General Motors Corp.; E. I. du Pont de Nemours and Co.; Coulton Chemical Corp.; Allied Chemical Corp.; Specialty Chemicals Division; The Hoover Co.; Aluminum Co. of America; Ohio Greenhouse Assoc.; Armco Steel Corp.; Buckeye Power, Inc.; Cincinnati Gas and Electric; Cleveland Electric Illuminating Co.; Columbus and Southern Ohio Electric; Dayton Power and Light Co.; Duquesne Light Co.; Ohio Edison Co.; Ohio Electric Co.; Pennsylvania Power Co.; Toledo Edison Co.; Ohio Edison Co.; RCA Rubber Co.

(2) In Summit County: Diamond Crystal Salt; Firestone Tire & Rubber Co.; General Tire & Rubber; B.F. Goodrich Co.; Goodyear Aerospace Corp.; Goodyear Tire & Rubber Co.; Chrysler Corp.; PPG Industries, Inc.; Seiberling Tire & Rubber; Terex Division of General Motors Corp.; Midwest Rubber Reclaiming; Kittinger Supply Co.

g. Attainment date will be specified in the future.

h. April 15, 1977.

i. December 31, 1987.

5. Section 52.1885 is amended by adding new paragraphs (a)(4), (b)(3) and (b)(4) to read as follows:

§ 52.1885 Control Strategy: Ozone.

(a) * * *

(4) The ozone nonattainment area plan for the rural nonattainment areas.

(b) * * *

(3) The attainment demonstrations for the urban areas of Canton, Cleveland, Columbus and Youngstown provided the deficiencies cited are corrected.

(4) The Reasonable Further Progress Demonstration for the urban areas of Canton, Steubenville and Youngstown provided the deficiencies cited are corrected.

6. Section 52.1886 is amended by adding a new paragraph (e) to read as follows:

§ 52.1886 Ozone Attainment and Reasonable Further Progress Demonstrations.

* * * * *

(e) Part D—Conditional Approval—The attainment demonstration for the Youngstown urban area is approved provided that the following conditions are satisfied:

(1) The State submit either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

(2) The State submit a revised RFP demonstration line to account for any changes made in the attainment demonstrations.

7. Section 52.1887 is amended by adding new paragraphs (a)(3) and (b)(4) to read as follows:

§ 52.1887 Control Strategy: Carbon Monoxide.

(a) * * *

(3) The carbon monoxide attainment and reasonable further progress demonstrations for the following urban areas: Cincinnati, Cleveland, Columbus and Youngstown.

(b) * * *

(4) For the Youngstown transportation control plan, the State submits the commitments of the Regional Policy Board to meet specific annual emission reduction goals.

[FR Doc. 80-33876 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-9 FRL 1632-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision: North Coast Air Basin

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on revisions to the North Coast Air Basin portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 1, 1980.

ADDRESS: A copy of the revisions is located at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105. Attn: Douglas Grano (415) 556-2938.

SUPPLEMENTARY INFORMATION: On March 20, 1980 (45 FR 18035) EPA published a notice of proposed rulemaking for revisions to the North Coast Air Basin rules and regulations submitted on May 7 and 23, 1979 by the California Air Resources Board (ARB) for inclusion in the California SIP.

The changes contained in those submittals that are being acted upon by this notice include the following:

(A) New rules to regulate equipment breakdown, emergency variances and particulates;

(B) Amended rules for controlling open outdoor fires, including agricultural burning and visible emissions; and

(C) Changes in the annual renewal and hearing board fee schedules.

A list of the affected rules was published as part of the March 20, 1980 notice of proposed rulemaking. As described in that notice, all the rules were evaluated, found to be in conformance with the requirements of 40 CFR Part 51, and proposed to be approved, with the exception of Rule 410(c)(2) which was proposed to be disapproved and Rule 410(b) for which no action was proposed. The notice of proposed rulemakiing provided for a 60 day public comment period. One comment letter was received from the Mendocino County APCD.

Comment: The District noted that they have recently recodified certain agricultural burning rules which EPA had proposed to disapprove and that the revised rules are consistent with the State ARB Agricultural Burning Guidelines. Further the District stated that they assumed EPA had approved these Agricultural Burning Guidelines.

Response: Because the District's recodified rules have not yet been submitted to EPA to replace the rules EPA had proposed to disapprove, EPA is taking final action to disapprove these "old" rules. Upon official submittal of the recodified rules, EPA will consider them for incorporation into the SIP. The State Agricultural Burning Guidelines were officially submitted to the EPA on August 5, 1980. EPA has not yet approved or disapproved these Guidelines.

Thus, it is the purpose of this notice to approve the revisions contained in the May 7 and 23, 1979 submittals, and to incorporate them into the California SIP, with the exception of Rules 410(b) and 410(c)(2) discussed below.

Rules 410(c)(2), *Visible Emissions,* submitted May 7, 1979, allows exceptions to the provisions Rule 410(a), and therefore could result in increased emissions. This rule is being disapproved for Del Norte, Humboldt, Mendocino, Northern Sonoma and Trinity Counties because an adequate control strategy analysis has not been submitted to show that these exceptions would not interfere with attainment or maintenance of the National Ambient Air Quality Standards.

Rule 410(b), submitted May 7, 1979, is applicable only in Mendocino County. However, Rule 410(b) also appears in the submittals for Del Norte, Humboldt, Northern Sonoma and Trinity Counties. Since it pertains only to Mendocino County no action is being taken on this rule with respect to Del Norte, Humboldt, Northern Sonoma and Trinity Counties.

As described in the March 20, 1980 proposed rulemaking notice, Rule 240, *Compliance Verification,* and Appendix D to Regulation I are being approved. Since these rules contain requirements equivalent to those in 40 CFR Part 52, EPA is also rescinding 40 CFR 52.224(a)(2)(xviii), (xix), (xxii), (xxv) and (xxx) and 40 CFR 52.234(e)(5)(ii) and (e)(9) for the respective Counties.

The Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

EPA has determined that this action is "specialized" and therefore, not subject to the procedural requirements of Executive Order 12044.

(Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)))

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

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, 1980.

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

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(50) and (51) (iii)–(vi) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(50) Revised regulations for the following APCD's submitted on May 7, 1979, by the Governor's designee.

(i) Del Norte County APCD.

(A) New or amended Rules 240, 410(a) and (c), and 615.

(ii) Humboldt County APCD.

(A) New or amended rules 240, 410 (a) and (c), 615.

(iii) Mendocino County APCD.

(A) New or amended rules 240, 410, and 615.

(iv) Trinity County APCD.

(A) New or amended rules 240, 410 (a) and (c), and 615.

(v) Northern Sonoma County APCD.

(A) New or amended Rules 240, 300, 310, 320, 410 (a) and (c), 420, 540, 615.

* * * * *

(51) Revised regulations for the following APCD's submitted on May 23, 1979, by the Governor's designee.

* * * * *

(iii) Del Norte County APCD.

(A) New or amended rules 130, 300, 310, 320, 420, 540 and Regulation 1/ Appendix D.

(iv) Humboldt County APCD.

(A) New or amended rules 130, 300, 310, 320, 420, 540 and Regulation 1/ Appendix D.

(v) Mendocino County APCD.

(A) New or amended rules 130, 300, 310, 320, 420, 540 and Regulation 1/ Appendix D.

(vi) Trinity County APCD.

(A) New or amended rules 130, 300, 310, 320, 420, 540 and Regulation 1/ Appendix D.

* * * * *

2. Section 52.224 is amended by adding paragraphs (a)(1)(vi)(C), (D), (E), (F), and (G) and by rescinding and reserving paragraphs (a)(2)(xviii), (xix), (xxii), (xxv), and (xxx) as follows:

§ 52.224 General Requirements.

(a) * * *

(1) * * *

(vi) * * *

(C) Del Norte County APCD

(D) Humboldt County APCD

(E) Mendocino County APCD

(F) Northern Sonoma County APCD

(G) Trinity County APCD

* * * * *

(2) * * *

(xviii) [Reserved]

(xix) [Reserved]

* * * * *

(xxii) [Reserved]

* * * * *

(xxv) [Reserved]

* * * * *

(xxx) [Reserved]

* * * * *

3. Section 52.234 is amended by adding (a)(6)(ii) and revoking and reserving paragraphs (e)(5) (ii) and (e)(9) as follows:

§ 52.234 Source Surveillance.

* * * * *

(a) * * *

(6) * * *

(ii) Northern Sonoma County APCD

* * * * *

(e) * * *

(5) * * *

(ii) [Reserved]

* * * * *

(9) [Reserved]

* * * * *

4. Section 52.273 is amended by adding paragraphs (b)(3)(i)(B), (b)(3)(ii)(B), (b)(3)(iii)(B), (b)(3)(iv)(B), and (b)(7)(i)(B) as follows:

§ 52.273 Open burning.

* * * * *

(b) * * *

(3) * * *
(i) * * *
(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.
* * * * *
(ii) * * *
(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.
* * * * *
(iii) * * *
(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.
* * * * *
(iv) * * *
(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.
* * * * *
(7) * * *
(i) * * *
(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.
* * * * *

[FR Doc. 80-33924 Filed 10-30-80; 8:45 am]
BILLING CODE 6560-26-M

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40 CFR Part 52

[A7 FRL 1643-8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The St. Louis County Air Pollution Control Appeal Board granted a variance for the Union Electric Company Meramec power plant to allow sufficient time for the company to design, construct and operate new control equipment for emissions of total suspended particulate (TSP) matter. EPA proposed to approve the variance as part of the applicable State Implementation Plan (SIP) in a **Federal Register** notice on July 11, 1980. One commentor responded to that proposal. In this notice, EPA is taking final action to approve this SIP revision.

EFFECTIVE DATE: This rulemaking is effective October 31, 1980.

ADDRESSES: Copies of the state submission, the comment received and the EPA prepared technical evaluation document are available at the following locations:

Air Support Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106;
Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460;
Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65102;
St. Louis County Department of Health and Medical Care, Division of Environmental Health Care Services, Air Pollution Control Branch, 801 South Brentwood Boulevard, Clayton, Missouri 63105.

Copies of the state submission and this rulemaking are also available at the following location:

Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger at 816-374-3791 (FTS 758-3791).

SUPPLEMENTARY INFORMATION: The Union Electric Company Meramec plant is subject to an SO_2 emission limit of 2.3 pounds per million BTU of heat input in addition to the mass emission rate contained in Rule 10 CSR 10-5.030 and the visible emission limit of Rule 10 CSR 10-5.090. At the time the variance was requested (July 1, 1978), the allowable total suspended particulate matter rate was 0.18 lb. per million BTU and the allowable visible emission limit was 40 percent opacity. The Meramec plant is located in St. Louis County near the Mississippi River approximately 19 kilometers south-southwest of the City of St. Louis.

In order to meet the required sulfur dioxide emission limit of 2.3 lbs. per million BTU of heat input, the Union Electric Company switched to low sulfur western coal. The existing particulate matter control devices used at the Meramec plant have proven to be inadequate to meet the TSP rules.

The Missouri Air Conservation Commission (MACC) amended Rule 10 CSR 10-5.090 to require sources to meet a 20 percent opacity limit at point sources and Rule 10 CSR 10-5.030 which is applicable to indirect heating sources. These rules are applicable only in the St. Louis Air Quality Control Region. Application of amended Rule 10 CSR 10-5.030 to the Union Electric Company Meramec power plant requires an emission limit of 0.12 lb. per million BTU of heat input. EPA approved these rules at 45 FR 24140 on April 9, 1980.

The St. Louis County Air Pollution Control Appeal Board granted a variance for the Meramec plant on November 22, 1978 after a public hearing on October 20, 1978. The variance allows the plant to operate at a mass emission rate of 0.30 lb. per million BTU of heat input and a visible emission limit of 50 percent opacity during the period of the variance. Final compliance for Units 1 and 2 is May 15, 1981, and November 30, 1981, for Units 3 and 4. EPA proposed to approve the variance as part of the applicable SIP on July 11, 1980 (45 FR 46826). A further discussion of the variance is given in that notice.

EPA received one set of comments in response to the proposed rulemaking. The commentor generally concurred with EPA's conclusions and strongly urged prompt approval of the Meramec variance. The commentor disagreed with one aspect of EPA's analysis. The proposed rulemaking stated that the variance did not agree with the 60-day period for submission to EPA required by 40 CFR 51.6(d). The St. Louis County Air Pollution Control Appeal Board adopted the variance on November 22, 1978, and submitted it to the Missouri Department of Natural Resources (MDNR) on February 16, 1979. MDNR submitted it to EPA on April 25, 1979. EPA stated in the proposed rulemaking that it does not believe the delay affects the approvability of the variance submittal.

The commentor agrees that the approvability of the variance is not an issue. However, the commentor believes that the 60-day submittal requirement was met because MDNR concurrence is required and the period for submittal should be computed from the date of MDNR concurrence. The commentor is correct that the variance requires state concurrence before it can become part of the SIP. However, the local agency adopted the variance under authority granted by the MACC at which time the variance became effective and 40 CFR 51.6(d) states that a revision of this type "shall be submitted to the Administrator no later than 60 days after its adoption." If the 60-day submittal requirement were to be computed from the date of the State's concurrence, a local agency could postpone indefinitely the submittal of such actions without violating the rule. EPA disagrees with the commentor but still believes that the approvability of the variance is not affected.

One part of the analysis given in the notice of July 11 requires further explanation. The portion of the county in which the Meramec plant is located is designated attainment for TSP at 40 CFR Part 81. Because the area is attainment, the possibility of consumption of increment under the Federal regulations for prevention of significant deterioration (PSD) of air quality is a matter for consideration. In the notice of proposed rulemaking, EPA stated that the PSD regulations exempt certain activities from an air quality impact analysis if such activities result in a temporary increase in emissions and

such emissions do not impact any Class I areas or areas where the applicable PSD increment is known to be violated. EPA believed the variance granted the Union Electric Company was similar to such activities and proposed an exemption by analogy to 40 CFR 52.21(k), relating to exemption from impact analysis for temporary emission sources.

On August 7, 1980, EPA published final PSD regulations (45 FR 52676). In that action, EPA decided that the existing policy of exempting temporary emissions from the analysis of the impacts on PSD increments should be extended to those associated with certain SIP relaxations. However, to obtain the exemption from an impact analysis, the Governor must make a specific request. EPA did not receive such a request in this instance, and therefore the analysis in the July 11 proposal is inappropriate.

This activity is, however, exempt from the analysis of impact on PSD increment because the state implementation plan revision approved today would not result in an increased air quality deterioration over any baseline concentration (40 CFR 51.24(a)(2), 45 FR 52729). The baseline date was established on July 17, 1978 and there are test results which indicate that the revision approved today would result in a decrease in TSP emissions over the baseline concentration.

This action is being made effective immediately inasmuch as it provides no additional burden on any affected party.

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 not subject to the procedural requirements of Executive Order 12044.

This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: October 23, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart AA—Missouri

1. Section 52.1320 is amended by adding paragraph (c) (22) as follows:

§ 52.1320 Identification of plan

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(22) On April 25, 1979, the Missouri Department of Natural Resources submitted the variance for the Union Electric Company's Meramec power plant.

2. Section 52.1335 is amended by adding the following to the end of the existing list in § 52.1335(a):

§ 52.1335 Compliance schedules.

(a) * * *

Source	Location	Regulation involved	Date adopted	Effective date	Final compliance date
Union Electric Company	St. Louis County.	10 CSR 10-5.030	Nov. 22, 1978.	Immediately	
		10 CSR 10-5.090			
Meramec Power Plant:					
Units 1 and 2	do				May 15, 1981
Units 3 and 4	do				Nov. 30, 1981

[FR Doc. 80-33925 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-8-FRL 1645-6]

Approval and Promulgation of State Implementation Plans; Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: The purpose of this notice is to make minor corrections to final rulemaking actions on plans required in Colorado nonattainment areas published for Colorado on July 16, 1980, (45 FR 47682) August 1, 1980, (45 FR 51199) and August 11, 1980, (45 FR 53147).

EFFECTIVE DATE: The effective date of this rulemaking is October 31, 1980.

ADDRESSES: Copies of the SIP revisions and an EPA evaluation of the revisions will be available at the EPA Offices listed below:

Environmental Protection Agency, Air Programs Branch, Region VIII, Suite 200, 1860 Lincoln Street, Denver, Colorado 80295.

Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), Mail Code PM-213, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Eliot Cooper, Technical Advisor, Planning & Operations Section, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-3711.

SUPPLEMENTARY INFORMATION: In our August 1, 1980, final rulemaking for Colorado, Title 40, Part 52 of the Code of Federal Regulations (CFR) was amended to add in 52.320, paragraph (c)(18). This paragraph is hereby changed to (c)(19) since paragraph (c)(18) had been added previously (45 FR 77682). In our August 11, 1980, final rulemaking, the CFR was amended to add paragraph (c)(19). This paragraph is hereby changed to (c)(20).

In our July 16 and August 1, 1980, final rulemakings, §§ 52.327 and 52.328 were revised incorrectly. These sections are hereby corrected to read as follows:

1. Section 52.327 is revised as follows:

§ 52.327 Control strategy: Ozone.

(a) Part D Conditional Approval—The Denver Plan is approved provided that the following conditions are satisfied:

(1) The plan provides for implementation of reasonably available control technology on existing sources of volatile organic compounds. EPA's conditional approval of Regulation 7 is based upon the State meeting the following schedule:

January 10, 1980—Notice of public hearing and draft regulations submitted to EPA

March 13, 1980—Public Hearing

April 10, 1980—Adopt new regulation and submit to EPA

(2) Regulation 3 is revised by March 1, 1980, so that it is consistent with Section 173 of the Act.

(3) Section 172(b)(11)(A) programs are adopted by March 1, 1980.

(b) [Reserved]

2. Section 52.328 is revised as follows:

§ 52.328 Control strategy: Carbon monoxide.

Part D Conditional Approval—the Denver, Colorado Springs, and Larimer-Weld plans are approved provided that a Section 172(b)(11)(A) program is adopted by March 1, 1980.

This rulemaking action is issued under the authority of Section 110 (42 U.S.C. 7410) of the Clean Air Act as amended.

Dated: October 14, 1980.

Gene A. Lucero,

Acting Regional Administrator.

[FR Doc. 80-33881 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-4 FRL 1613-2]

Approval and Promulgation of Implementation Plans; Alabama, Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Alabama has revised its air pollution control regulations by revoking the provisions for the preconstruction review of complex sources—parking facilities, roads, and airports. These are also known as "indirect" sources since they may indirectly increase emissions by causing increased motor vehicle traffic where they are built. EPA today is approving this revision.

DATE: This rule is effective December 1, 1980.

ADDRESSES: The Alabama submittal may be examined during normal business hours at the following EPA Offices:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460

Library, Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365

In addition, the Alabama revisions may be examined at the offices of the Division of Air Pollution Control, Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Alabama 36104.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Preston, EPA Region IV, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: Pursuant to the decision by the District of Columbia Circuit Court of Appeals in *NRDC v. EPA*, 475 F. 2d 968 (D.C. Cir. 1973), the Agency on June 18, 1973 (38 FR 15834) promulgated changes in 40 CFR 51.18 requiring State Implementation Plans to provide for preconstruction review of indirect sources of air pollution. Alabama was one of the few States to respond within the deadline set by EPA for the submittal of an indirect source plan. The Alabama plan, set forth as Chapter 10 of the State's air pollution control regulations, was approved by the Administrator, except for inadequate provisions for public comments, on February 25, 1974 (39 FR 7270). Also at that time, a Federal regulation was promulgated for States which had failed to submit an acceptable indirect source plan.

These Federal regulations have never been implemented and were suspended indefinitely in 1975. See 40 CFR 52.22 (b)(16)(1978). Consequently, Alabama has never implemented its own indirect source regulations and EPA has not enforced those Alabama regulations. The State believed that these regulations of the Clean Air Act (concerning the State attainment strategy for nonattainment areas) could be met for vehicle related pollutants by more effective and reliable means. Therefore, on November 27, 1978, Alabama revoked its indirect (complex) source regulations, following public notice in conformity with 40 CFR 51.4. This change was submitted to EPA's Region IV office as a proposed implementation plan revision on December 6, 1978.

In the **Federal Register** of March 15, 1979 (44 FR 15741), EPA announced the revision as proposed rulemaking and solicited public comment on it. One comment was received, supporting the Agency's proposal to approve the revision. In the notice of proposed rulemaking, the Agency stated that it proposed to approve the Alabama revision on the grounds that it is authorized by Section 110 (a)(5) of the Clean Air Act; that Alabama is proceeding to revise its SIP to provide for the attainment and maintenance of the National Ambient Air Quality Standards for ozone as required by Part D of Title I of the Act; and that in all other respects the State's ozone plan meets the requirements of Section 110(a) of the Act.

On April 3, 1979, the Alabama Air Pollution Control Commission officially adopted implementation plan revisions designed to assure the attainment of the National Ambient Air Quality Standards for ozone in the five counties officially designated in 40 CFR Part 81 as nonattainment for that pollutant. An advance copy of the revisions was submitted to EPA on April 5, 1979. This contains a control strategy demonstration that the ozone standards will be met by December 1982 through the Federal Motor Vehicle Control Program (FMVCP) and newly adopted regulations representing RACT for stationary sources of volatile organic compounds. There are no nonattainment areas for CO or NO_2 (the other motor vehicle-related pollutants for which there are national ambient standards) in Alabama. Recently, the case of *Manchester Environmental Coalition v. United States Environmental Protection Agency*, 612 F. 2d 56 (2d Cir. 1979), was decided. That case involved EPA approval of a State's request to revoke its indirect source review program which was part of the State Implementation Plan (SIP). The Court held that before deciding whether to approve such a revocation EPA must consider whether revocation would render the SIP inadequate to attain and maintain the national ambient air quality standards.

EPA proposed approval of the Part D plan for attaining the ozone standard in Alabama on July 19, 1979 (44 FR 42242). The strategies for attaining the ozone standard were found to represent reasonable further progress toward attainment and to meet the other requirements under Part D. As mentioned, the only public comment submitted was in favor of EPA's proposed approval and this action was finalized on November 26, 1979 (44 FR 67375).

Since EPA has approved the Part D plan for attainment of the ozone standard, use of a additional strategy of indirect source review is not needed to meet attainment requirements of the Clean Air Act. EPA concludes that revocation would not render the SIP inadequate to attain those standards.

The second inquiry is whether revocation would render the SIP inadequate to maintain air quality standards. At the outset, it must be recognized that indirect source review is no longer one of the requisite elements of SIPs in general, under 40 CFR 51.11 (a) (1978). (See 44 FR 15741 [Mar. 15, 1979] and *Manchester Environmental Coalition*, cited earlier in this notice.) Also, the only public comment submitted was in favor of EPA's proposed approval and this action was finalized on November 26, 1979 (44 FR 67375).

Since EPA has approved the Part D plan for attainment of the ozone standard, use of an additional strategy of indirect source review is not needed to meet attainment requirements of the Clean Air Act. EPA concludes that

revocation would not render the SIP inadequate to attain those standards.

The second inquiry is whether revocation would render the SIP inadequate to maintain air quality standards. At the outset, it must be recognized that indirect source review is no longer one of the requisite elements of SIPs in general, under 40 CFR 51.11(a)(1978). (See 44 FR 15741 [Mar. 15, 1979] and *Manchester Environmental Coalition,* cited earlier in this notice.) Also, the Alabama indirect source review regulations have never been implemented, either by the State or EPA. Therefore, revocation of those regulations cannot adversely affect present maintenance of air quality standards. Moreover, the prevention of significant deterioration (PSD) requirements of Part C of the 1977 Amendments to the Clean Air Act will help maintain air quality standards through review of new direct sources. For the foregoing reasons, EPA concludes that revocation of the indirect source regulations would not render the Alabama SIP inadequate to maintain national ambient air quality standards.

In the **Federal Register** of April 1, 1980 (45 FR 21290), EPA announced the revision as reproposed rulemaking and solicited public comment on it. No additional comments were received. From the previous explanation, EPA concludes that revocation of the indirect source review would not render the Alabama SIP inadequate to attain and maintain national ambient standards. On this basis, EPA approves the revocation.

(Sec. 110(a), Clean Air Act (42 U.S.C. 7410(a))

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

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

Subpart B—Alabama

1. In § 52.50, paragraph (c) is amended by adding subparagraph (24) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(24) Revision to the State Implementation Plan to delete the indirect source regulations submitted by the Alabama Air Pollution Control Commission on December 12, 1978.

§ 52.56 [Revoked]

[FR Doc. 80-33989 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-2 FRL 1626-2]

Approval and Promulgation of Implementation Plans; Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 11, 1980 (45 FR 15531), the Environmental Protection Agency (EPA) promulgated conditional approval of the New Jersey State Implementation Plan (SIP) with regard to its ability to meet the requirements of Part D of the Clean Air Act, as amended. This conditional approval identified, among other corrective actions necessary, the need to submit to EPA: (1) an acceptable description of the State's transportation planning process highlighting those changes addressing air quality planning concerns and applicable SIP commitments, (2) a summary of the manpower and financial resources at the State, local and regional levels which are being committed to ensure a coordinated effort in transportation-air quality planning, and (3) a description of the comprehensive and systematic program which will be used for the selection of needed transportation control measures.

This notice advises the public that these conditions have been fulfilled through submission of the required documentation under cover of an April 22, 1980 letter from the State. EPA proposed approval of this submission on June 24, 1980 (45 FR 42335) and is now taking action to finalize this proposal. EPA is also incorporating the provisions of the State's submission into the approved SIP, and is revoking the applicable conditions on its approval of the plan. Until all conditions are met conditional approval of the SIP will continue.

EFFECTIVE DATE: This action is made effective October 31, 1980, inasmuch as it provides no additional burden upon any affected party. Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition of review in the United States Court of Appeals for the appropriate circuit on or before December 30, 1980. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESS: Copies of the State's submission are available for inspection at the following addresses:

Environmental Protection Agency, Air Programs Branch, Region II Office, 26 Federal Plaza—Room 1005, New York, New York 10278.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza—Room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

On March 11, 1980, at 45 FR 15531, the Environmental Protection Agency (EPA) promulgated conditional approval of the New Jersey State Implementation Plan (SIP) with regard to its ability to meet the requirements of Part D of the Clean Air Act, as amended. Today's notice discusses three conditions of EPA's approval of the plan. These required the State to submit to EPA by April 1, 1980:

1. An acceptable description of its transportation planning process which highlights those changes made to the existing process to integrate air quality planning concerns and address applicable SIP commitments.

2. A summary of manpower and financial resources at the State, local and regional levels which are being devoted to ensure a coordinated effort in transportation-air quality planning.

3. A description of the comprehensive and systematic program which will be used for the selection of needed transportation control measures.

In response to these requirements, on April 22, 1980, the Commissioners of the New Jersey Department of Transportation and Environmental Protection jointly submitted to EPA documents entitled, "The Transportation Planning Process in New Jersey," "Summary of Financial Resources For Transportation-Air Quality Planning," and "Program for Selection of Needed Transportation Control Measures, April 1980."

EPA promulgated proposed approval of this submission in the June 24, 1980, **Federal Register** at 45 FR 42335. The reader is referred to this **Federal Register** notice for a detailed discussion of EPA's findings.

During the 60-day comment period following publication of its June 24, 1980,

notice, EPA received one formal comment concerning the State's submission. In an August 18, 1980, letter the Region I Office of the Federal Highway Administration indicated that the criteria ultimately developed for determining consistency and conformity with the SIP should be guided by a June 12, 1980, United States Department of Transportation-EPA agreement entitled, "Procedures for Conformance of Transportation Plans, Programs and Projects with Clean Air Act State Implementation Plans." This agreement states the principles used by the United States Department of Transportation for determining conformance of transportation plans and programs with the SIP. EPA concurs with this comment and will encourage the metropolitan planning organizations in New Jersey to consult the guidelines in their development of consistency and conformity criteria.

Based on its review of the submitted documents, the comment received, and discussions with affected agencies EPA finds that the subject conditions on its approval of the New Jersey SIP have been fully met. Therefore, EPA is incorporating the State's submission into the SIP and revoking the applicable conditions. Furthermore, this action serves to continue EPA's conditional approval since two unfulfilled conditions remain.

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.

Dated: October 23, 1980.

(Sections 110, 172, and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601))

Note.—Incorporation by reference of the State Implementation Plan for the State of New Jersey was approved by the Director of the **Federal Register** on July 1, 1980.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

Title 40, Chapter I, Subchapter C, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. Section 52.1570 is amended by adding a new paragraph (c)(26) as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(26) A supplementary submittal, dated April 22, 1980, from the New Jersey Department of Environmental Protection and the New Jersey Department of Transportation consisting of three documents entitled "The Transportation Planning Process in New Jersey," "Summary of Financial Resources for Transportation-Air Quality Planning," and "Program for Selection of Needed Transportation Control Measures, April 1980."

§ 52.1581 [Amended]

2. Section 52.1581 is amended by revoking and reserving paragraph (b) in its entirety.

[FR Doc. 8-34032 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-4-FRL 1649-2]

Approval and Promulgation of Implementation Plans; Kentucky: Approval of 1979 Sulfur Dioxide Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today announces its approval of the State Implementation Plan (SIP) revisions which the Kentucky Department for Natural Resources and Environmental Protection submitted pursuant to the requirements of Part D of Title I of the Clean Air Act, as amended in 1977, for sulfur dioxide (SO_2) nonattainment areas. EPA's approval is given on condition that certain deficiencies be corrected by July 1, 1981. If the deficiencies are not corrected by July 1, 1981, EPA will then disapprove the affected portions of the revisions. Other deficiencies in the SIP are removed through EPA disapproval action.

DATE: These actions are effective October 31, 1980.

ADDRESSES: Copies of the materials submitted by Kentucky and comments received in response to the proposal notice of November 15, 1979 (44 FR 65781), may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460;

Library, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Barry Gilbert, EPA, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

SUPPLEMENTAL INFORMATION:

Background

In the March 3, 1978, **Federal Register** (43 FR 8962 at 8997) the areas listed below were designated as not attaining the national primary (P) or secondary (S) ambient air quality standards (NAAQS) for sulfur dioxide. The designation of the Boyd County area was revised on November 2, 1979 (44 FR 63104).

A. That portion of Boyd County south of UTM northing line 4251 km (P).

B. That portion of Daviess Co. in Owensboro (P&S).

C. Greenup County (P&S).

D. That portion of Henderson Co. in Henderson (P).

E. Jefferson County (P&S).

F. McCracken County (P).

G. Muhlenberg County (P&S).

H. Webster County (P&S).

Greenup County was designated nonattainment for the primary and secondary sulfur dioxide NAAQS because of the noncompliance of a sulfuric acid plant belonging to E. I. du Pont de Nemours and Co. On August 31, 1978, the source was certified to be in compliance. The Commonwealth of Kentucky requested that the area be redesignated attainment and this was done on July 18, 1979 (44 FR 41782). Also, the State recently submitted air quality data showing the Owensboro and Henderson areas to be attainment and requested redesignation to attainment; this will be dealt with in a separate **Federal Register** notice.

The Kentucky revisions have been reviewed by EPA in light of the Clean Air Act (CAA), EPA regulations, and additional guidance materials. The criteria utilized in this review were detailed in the **Federal Register** on April 4, 1979 (44 FR 20372), and need not be repeated in detail here. Supplements to the April 4 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53716), and November 23, 1979 (44 FR 67182); these involve, among other things, conditional approval. EPA is conditionally approving the revisions since the deficiencies are minor and the Commonwealth has provided assurance that it will submit corrections by the July 1981 deadline specified.

A discussion of conditional approval and its practical effect appears in

supplements to the General Preamble, 44 FR 38583 (July 2, 1979) and November 23, 1979 (44 FR 67182). The conditional approval requires the Commonwealth to submit additional materials by the deadline specified in today's notice. EPA will follow the procedures described below when determining if the Commonwealth has satisfied the conditions.

1. If the Commonwealth submits the required additional documentation according to schedule, EPA will publish a notice in the **Federal Register** announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the Commonwealth's submission to determine if the condition is fully met. After review is complete, a **Federal Register** notice will be published proposing or taking final action either to find the condition has been met and approve the plan, or to find the condition has not been met, withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the Commonwealth fails to submit in a timely manner the required materials needed to meet a condition, EPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and Section 110(a)(2)(I) restrictions on growth are in effect.

A conditional approval will mean that the restrictions on new major source construction will not apply unless the Commonwealth fails to submit the necessary SIP revisions by the scheduled dates, or unless the revisions are not approved by EPA.

In addition to the implementation plan revisions for the nonattainment areas required under Part D of Title I of the Clean Air Act (CAA), the Commonwealth's submittal contains changes related to other portions of the CAA, including changes in the New Source Performance Standard (NSPS) regulations, regulations concerning prevention of significant deterioration, and other emission standards. These topics will be dealt with in a separate **Federal Register** notice.

General Discussion

Section 172(b) of the Clean Air Act (CAA) contains the requirements for nonattainment State Implementation Plans. These were listed in the proposal notice together with a discussion of the contents and adequacies of the Kentucky submittals. The reader may consult that notice (44 FR 65781, November 15, 1979) for any details not provided in the present notice as to how the Kentucky submittal satisfies the requirements of Section 172. Also, the notice of January 25, 1980 (45 FR 6092), conditionally approving the Kentucky 1979 ozone plan, approved regulations which apply to all air pollution sources and thus involve the sulfur oxide control strategy as well.

The plan provides for reasonable further progress (RFP) towards attaining and maintaining the NAAQS. RFP for sulfur dioxide nonattainment areas includes reductions in emissions to attain the primary and secondary NAAQS on or before December 31, 1982, except for Jefferson County, which has an attainment date of January 1, 1985 (see the discussion of Sulfur Dioxide-Jefferson County included below).

Sulfur Dioxide

Boyd County: The entire county was originally designated nonattainment for the primary sulfur dioxide NAAQS. Pursuant to the Commonwealth's request, EPA on November 2, 1979 (44 FR 63104), modified the geographic area to include as nonattainment only the area around the Ashland Oil Plant (Boyd County south of UTM Northing Line 4251 km). Recent ambient monitoring indicates the area is also not attaining the secondary NAAQS. The control strategy demonstrates that the short term and annual emission limitations recently adopted for Class VA counties will attain the primary and secondary NAAQS. An ambient and meteorological monitoring study was conducted to evaluate the diffusion model's validity in the complex terrain around the Ashland Oil facility. The contractor's report for the study is the basis of the control strategy demonstration. A major portion of the emission reductions will come from Ashland Oil while the remainder will come from other major sources in southern Boyd County. All sources subject to more stringent or new emission limits shall demonstrate compliance as expeditiously as practicable but in no case later than December 31, 1982.

EPA conditionally approves this portion of the SIP because of the deficiencies listed below:

1. Regulation 401 KAR 61:015, Existing Indirect Heat Exchangers, states in Section 5(4), Standard for Sulfur Dioxide, "In counties classified as VA with respect to sulfur dioxide, for sources having total heat input greater than fifteen hundred million BTU per hour (1500 MMBTU/hr.) as determined by Section 3(1) of this regulation, no owner or operator shall allow the annual average sulfur dioxide emission rate from all existing and new affected facilities combined at the source to exceed 0.60 pounds per million BTU." This regulation (applicable to Ashland Oil) is unenforceable because there is no method specified for continually determining compliance with this annual average emission limit. The usual method of determining compliance by stack test may not be practical since there are over 50 affected emission points at Ashland Oil and since it is an annual, not a short-term, limit. Therefore, the method of determining the compliance status of the oil/gas-fired units must be clearly specified and should address the frequency of oil sample collections and analyses, the locations of sample collection points, the analytical techniques which are acceptable, the acceptable method for monitoring fuel consumption, and the reporting frequency.

The regulation implies that compliance determination will be made on the basis of a single annual averaging period. If the time averaging basis is consecutive blocks of 365-day periods, there is no way of knowing whether the plant is continually in compliance with this annual average limit.

A moving 365 day averaging period which is recalculated each day would enable the plant to demonstrate on a daily basis its compliance status in regard to this annual limit.

2. A legally enforceable compliance schedule with increments of progress must be a part of the SIP (See General Sulfur Dioxide Conclusions).

3. The plan's provisions for ambient monitoring around the Ashland Oil complex must include a starting date, specify the duration of the program and require the use of the Federal equivalent method. EPA considers the monitoring to be an essential feature of the control strategy and thus an enforceable obligation upon the State.

This conditional approval of the Boyd County SO_2 control strategy is in effect a revocation of the disapproval action of May 10, 1976 (41 FR 19105).

City of Owensboro: This nonattainment area is located within Daviess County and is designated nonattainment for the primary and secondary sulfur dioxide NAAQS. The control strategy demonstrates through modeling that the existing emission limitations will assure attainment of the NAAQS. The nonattainment designation is based upon the noncompliance of Owensboro Municipal Utility Elmer Smith power plant. The source was

following Federal Administrative Order #AO–77–235(a) and the plant demonstrated compliance with the applicable SO_2 emission limit on March 1, 1978. Recent air quality data shows attainment, and the Commonwealth has requested redesignation. EPA will propose redesignation to attainment in a separate notice.

City of Henderson: This nonattainment area is located within Henderson County and is designated nonattainment for the primary NAAQS for sulfur dioxide. Measured violations due to noncompliance of Henderson Municipal Power and Light were previously recorded.

Since the plant came into compliance during 1977, the ambient monitor has measured acceptable levels. No revision to the control strategy was necessary. The Commonwealth has requested this area be redesignated attainment and EPA is preparing a separate **Federal Register** proposal notice to address this issue.

Jefferson County: The Louisville area is nonattainment for the primary and secondary sulfur dioxide NAAQS. Ambient monitoring has shown and diffusion modeling predicts violations of the NAAQS due to emissions from power plants and to a lesser degree from area sources. The control strategy demonstration shows that when all sources are in compliance with the present emission limits the NAAQS will be attained.

The three power plants owned by Louisville Gas and Electric Company in Jefferson County are subject to Federal Administrative/Agreed Orders 75–138(a), issued on November 5, 1975, and 76–21(a), issued on February 26, 1976, which specify final compliance for all units prior to December 31, 1982, except for Paddy's Run Unit 5 and Cane Run Units 1, 2, and 3, which must achieve final compliance by July 1, 1983, and January 1, 1985, respectively.

The Clean Air Act specifies December 31, 1982, as the date for attainment of the primary NAAQS. However, Section 113(d)(12) specifically provides that orders of the type issued to Louisville Gas and Electric, remain in effect beyond this date. Since attainment for Jefferson County requires compliance with these orfers by Louisville Gas and Electric attainment will not be reached in Jefferson County until January 1, 1985. EPA has determined that no source other than Louisville Gas and Electric is subject to this provision of Section 113(d)(12). Therefore, there should be no other attainment extensions on this basis. The existence of the Louisville Gas and Electric orders does not extend the required attainment date for all of Jefferson County. All other sources in the County are required to be in compliance with the SIP at the present time and are expected to remain in compliance. The 1985 date relates only to the Section 113(d)(12) orders issued to Louisville Gas and Electric.

McCracken County: This area is designated nonattainment for the primary sulfur dioxide NAAQS. The control strategy demonstrates that the Shawnee TVA power plant caused the recorded ambient violations. The NAAQS will be attained when the source comes into compliance with the existing emission limitation which the control strategy shows to be adequate. Section 8(2)(a) of regulation 401 KAR 61:015 allows the TVA Shawnee power plant until October 1, 1981, to achieve compliance. The source was previously required to be in compliance by July 1, 1977, with the emission limits in the presently approved SIP. Since the source is not being made subject to stricter emission limits, this portion of the regulation is disapproved. This disapproval, in effect, removes Section 8(2)(a) from the SIP, thereby enabling the part of the SIP applicable to McCracken County to be approved. As a result, Section 110(a)(2)(I) of the CAA will not apply. The Commonwealth may correct this deficiency by removing Section 8(2)(a) from regulation 401 KAR 61:015.

Muhlenberg County: This area is designated nonattainment for the primary and secondary sulfur dioxide NAAQS due to noncompliance of two power plants. The control strategy demonstrates by diffusion modeling that the proposed more stringent emission limits for the power plants are adequate to assure attainment of the NAAQS. TVA's Paradise power plant is scheduled to achieve compliance by September 1, 1982. Kentucky Utilities' Green River power plant was also subject to an established compliance schedule for achieving final compliance on March 1, 1980, and is now in compliance. EPA approves the compliance schedules for these two plants, contained in regulation 401 KAR 61:015, Section 8.

Webster County: This area is designated nonattainment for the primary and secondary sulfur dioxide NAAQS. The control strategy demonstrates through modeling that the existing emission limitations (which were not revised) are adequate. The area was designated nonattainment because the Big Rivers Electric Corporation-Reid Station power plant was out of compliance. The source is following Federal Administrative/Agreed Orders AO 77–251(a) and 77–252(a) and AO 77–1580–003 and 77–4020–0001 which specify final compliance by January 1, 1980. This compliance schedule was not submitted as part of the plan, but is enforceable by EPA. It cannot be approved as part of the SIP since the source is not being made subject to stricter emission limits.

General Sulfur Dioxide Conclusions

EPA disapproves a portion of the plan for all SO_2 nonattainment areas due to the following deficiency. Regulation 401 KAR 61:015, Existing Indirect Heat Exchangers, at paragraph (2)(d) of Section 8, Compliance Timetable, requires sources in nonattainment areas to demonstrate compliance . . . "as expeditiously as practicable but in no case later than December 31, 1982".

However, only sources which are subject to a more stringent emission limit due to this SIP revision may be allowed time to attain compliance. Section 8(2)(d), as now written allows sources which are not subject to more strict emission limits to have additional time to achieve compliance. EPA disapproves this portion of the plan as it relates to compliance schedules for sources in the latter category. This disapproval, in effect, removes that unapprovable portion of Section 8(2)(d) from the SIP, thereby enabling the affected part of the SIP to be approved. As a result, Section 110(a)(2)(I) of the CAA will not apply. The Commonwealth may remove this deficiency by modifying Section 8(2)(d) so that it applies only to sources being made subject to stricter emission limits.

EPA conditionally approves the portion of the SIP relating to regulation 401 KAR 61:015, Section 8(2)(d), as it applies to any SO_2 source in a nonattainment area which is subject to a more stringent emission limit. The approval is conditional since there are no increments of progress in the compliance schedule. The Commonwealth may correct the deficiency by modifying the regulation so that sources being made subject to stricter emission limits have compliance schedules which include increments of progress.

Public Comments

Numerous comments have been received in response to the notice of proposed rulemaking on the Kentucky revisions which appeared in the **Federal Register** on November 15, 1979 (44 FR 65781). EPA responded to comments related to the ozone control strategy in the notice of conditional approval which appeared on January 25, 1980 (45 FR 6092); a response was also given in this

notice to a number of comments which were applicable to all the 1979 State implementation revisions. Comments on the particulate revisions are being dealt with in a separate notice which is being prepared for the purpose of reproposing action on these portions of the Kentucky Part D submittal; this notice will also respond to a number of comments which apply to the Kentucky revisions generally. Today's notice will respond only to comments which relate solely to the sulfur dioxide revisions.

Comment: A commenter has expressed the opinion that the compliance schedule for meeting the new SO_2 emission limit of 3.1 lbs./10^6 BTU for the Tennessee Valley Authority's Paradise plant is in violation of the previous 5.2 lbs./10^6 BTU limit. In other words, the objection is that Paradise should not be given an extension of the original July 1, 1977 compliance deadline for taking steps necessary to comply with the previous 5.2 lb. limit.

Response: This commenter misconstrues the nature of this agency's approval action for the Paradise SO_2 compliance schedule. This approval of the new Paradise schedule does not supplant the compliance schedule designed to meet the original 5.2 lbs. limit but is rather an appendage to it. It should also be emphasized that the new Paradise SO_2 compliance schedule as submitted by Kentucky reflects the schedule incorporated into a proposed consent decree in a pending civil action in United States District Court in Nashville, Tennessee. This proposed consent decree was negotiated in good faith by EPA, TVA, the Commonwealth of Kentucky and various public interest organizations in order to bring TVA into compliance with the Clean Air Act. The resultant 3.1 lbs. limit was based on a modeling effort conducted during the course of that litigation which demonstrated that the then existing 5.2 lbs. limit was insufficient to protect National Ambient Air Quality Standards. Failure by TVA to adhere to the new compliance schedule designed to meet that new 3.1 lbs. limit would constitute violation of not only the consent decree but also the state implementation plan itself as modified by the new appended compliance schedule.

Comment: Conversely, several commenters have objected to the disapproval of the compliance schedule extending the final compliance date for the extant 1.2 lbs./10^6 BTU SO_2 limit for TVA's Shawnee Steam Plant.

Response: Nothing in the Clean Air Act authorizes the extension of a final compliance date for a source in violation of a previous SIP emission limit except the delayed compliance order provisions of Section 113(d), 42 U.S.C. § 7413(d). Those provisions were not applicable in this case because no such delayed compliance order was ever issued. In this case, the 1.2 lbs. emission limit has been in effect since 1972 and has not been made more stringent by this plan revision. Therefore, there is no legal basis for extending the time for compliance for this unchanged emission limit. Disapproval of the compliance schedule for Shawnee as part of the Kentucky implementation plan in no way detracts from the legal efficacy of that schedule as incorporated into the proposed consent decree now pending in United States District Court in Nashville, Tennessee. Failure to adhere to that compliance schedule would nonetheless constitute violation of that consent decree.

Comment: One commenter objects to the disapproval of the Shawnee SO_2 compliance schedule on the specific ground that it could result in the payment by TVA of large noncompliance penalties under Section 120 of the CAA.

Response: Such penalties could be imposed under the regulations promulgated by the Agency to implement Section 120 (45 FR 50086, July 28, 1980). The Shawnee facility is not being subjected to any new or more stringent SO_2 emission limitations than were contained in the original SIP. The General Preamble of April 4, 1979 makes it clear that existing SIP requirements cannot be set aside by Part D revisions (44 FR 20374, note 12).

Comment: Another commenter has objected to the 3.1 lbs/10^6 BTU SO_2 limit for TVA's Paradise Plant as being more stringent than necessary to protect National Ambient Air Quality Standards.

Response: Section 116 of the Clean Air Act, 42 U.S.C. § 7416, does not permit EPA to disapprove a state-submitted plan revision on the basis of excessive stringency. This was affirmed by the United States Supreme Court in *Union Electric Company* v. *EPA*, 427 U.S. 246 (1976), which held that EPA could not disapprove a state implementation plan as long as the plan was adequate to attain and maintain National Ambient Air Quality Standards.

Comment: That same commenter contended that there should have been notice to the public by the Commonwealth of Kentucky that such limit was overly stringent.

Response: EPA's evaluation of available dispersion modeling indicated that this emission limit is not overly stringent. TVA voluntarily agreed to meet such limit as part of the settlement of the civil enforcement litigation in United States District Court in Nashville, Tennessee. These proceedings were a matter of public record. Irrespective of these facts, nothing in the Clean Air Act requires such a notice.

Comment: Another commenter feels the use of continuous ambient SO_2 monitors is technically impractical.

Response: Since most State and local air pollution control agencies and many existing industries have been using continuous ambient SO_2 monitors for several years, EPA believes a source can practicably and reliably monitor continuously for SO_2.

Comment: The commenter feels that "ambient monitoring is more appropriately a government function, especially where previous monitoring revealed large contributions from other sources and the sites in question are not only in another State but another U.S. EPA Region."

Response: Because of discrepancies between modeled and measured values, and because of uncertainties as to what actual emissions were during the previous monitoring study, ambient monitoring is needed around the Ashland Oil plan to assure that standards are met. EPA considers the monitoring requirement in the control strategy to be an obligaiton enforceable against the State. The requirement for ambient monitoring is based on Section 110(a)(2)(B), (C), and (F) of the Clean Air Act. While it is the State's obligation to ensure that the monitoring program is carried out, the State may require the source to do the monitoring under State regulation 401 KAR 50:050.

Response: EPA's evaluation of available dispersion modeling indicated that this emission limit is not overly stringent. TVA voluntarily agreed to meet such limit as part of the settlement of the civil enforcement litigation in United States District Court in Nashville, Tennessee. These proceedings were a matter of public record. Irrespective of these facts, nothing in the Clean Air Act requires such a notice.

Comment: The commenter also feels the use of continuous ambient SO_2 monitors is technically impractical.

Response: Since most State and local air pollution control agencies, many existing industries, and numerous industries desiring PSD permits have been using continuous SO_2 monitors for several years, EPA believes a source can practicably and reliably monitor continuously for SO_2.

Comment: The commenter feels that "ambient monitoring is more

appropriately a government function, especially where previous monitoring revealed large contributions from other sources and the sites in question are not only in another State but another U.S. EPA Region."

Response: The previous monitoring program by the source, as discussed in the SIP control strategy, circled the Ashland Oil refinery with monitors which measured 3 and 24-hour violations due to the refinery. Ambient monitoring is a government function, but can also be a responsibility of the source, as in the case of application for a PSD permit or a bubble revision. Nevertheless, EPA is dropping the requirement for continuous ambient monitoring contained in the November 15, 1979, proposal. It is strongly recommended, however, that such monitoring be done in the vicinity of the Ashland Oil complex.

Comment: The commenter (Ashland Oil) felt that regulation 401 KAR 61:015, Section 5(4) is enforceable and that there are demonstrated methods available for determining emission rates within the refinery.

Response: EPA's position is that this regulation (applicable to Ashland Oil) is unenforceable because there is no method specified for continually determining compliance with this annual average emission limit. The usual method of determining compliance by stack test may not be practical since there are over 50 affected emission sources at Ashland Oil and since it is an annual, not a short-term, limit. Therefore, the method of determining the compliance status of the oil/gas-fired units must be clearly specified and should address the frequency of oil sample collections and analyses, the locations of sample collection points, the analytical techniques which are acceptable, the acceptable method for monitoring fuel consumption, and the reporting frequency.

The regulation implies that compliance determination will be made on the basis of a single annual averaging period. If the time averaging basis is consecutive blocks of 365-day periods, it is not possible to determine whether the plant is continually in compliance with this annual average limit. A moving 365-day averaging period which is recalculated each day would enable the plant to demonstrate on a daily basis its compliance status in regard to this annual limit.

Attainment Dates

For a general discussion of this topic, the reader may consult the notice giving conditional approval to the ozone plan (January 25, 1980, 45 FR 6092). The present notice affects only the attainment dates for SO_2 nonattainment areas; these are adjusted to reflect the actions taken here.

Reference should be made to the 1979 edition of Title 40 of the Code of Federal Regulations (40 CFR 52.926) to determine the applicable deadline for attainment under Section 110(a)(2)(A) of the CAA.

Actions

The Administrator conditionally approves Kentucky's 1979 revision, for sulfur dioxide nonattainment areas on the condition that deficiencies noted be corrected by July 1, 1981. It is EPA's intent to fully approve these revisions when the Commonwealth corrects the deficiencies discussed in this notice. If these corrections are not forthcoming by July 1, 1981, EPA will act to disapprove the related plan revisions. This action is effective immediately. EPA finds good cause to make this conditional approval immediately effective, because the Clean Air Act restricts new construction where plans are not approved after June 30, 1979. Making the conditional approval immediately effective will terminate the restriction as soon as possible; moreover, the revision imposes no requirement that is not already in effect at the State level. EPA disapproves (removes from the plan) compliance schedules for sources which are not being made subject to stricter emission limits. This disapproval, in effect, removes the unapprovable portion from the SIP, thereby enabling the affected part of the SIP to be approved. As a result, Section 110(a)(2)(I) of the CAA will not apply.

Under Section 307(b)(1) of the Clean Air Act, judicial review of these actions is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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.

(Secs. 110 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the Federal Register on July 1, 1980.

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

Subpart S—Kentucky

1. Section 52.920 is amended by adding a subparagraph (13) to paragraph (c) as follows:

§ 52.920 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified. * * *

(13) 1979 revisions for Part D requirements for sulfur dioxide nonattainment areas (Boyd, Jefferson, McCracken, Muhlenberg, and Webster Counties), submitted on June 29, 1979, by the Kentucky Department for Natural Resources and Environmental Protection.

2. Section 52.923 is revised to read as follows:

§ 52.923 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Kentucky's plans for the attainment and maintenance of the national standards under § 110 of the Clean Air Act. Furthermore, the Administrator finds the plans satisfy all requirements of Part D, Title I, of the Clean Air Act as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs issued between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

(b) New Source review permits issued pursuant to Section 173 of the Clean Air Act will not be deemed valid by EPA unless the provisions of Section V of Appendix S of 40 CFR Part 51 are met.

3. Section 52.926 is revised to read as follows:

§ 52.926 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. The dates reflect the information presented in Kentucky's plan, except where noted.

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxide		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Appalachian Intrastate	c	*c*	b	b	b	b	b
Bluegrass Intrastate:							
a. Fayette Co. [1]	a	*c*	b	b	b	b	*g*
b. Rest of AQCR	a	*c*	b	b	b	b	b
Evansville (Indiana Owensboreo Henderson (Kentucky) Interstate:							
a. Henderson Co. [1]	c	c	a	e	b	b	*g*
b. Webster Co. [1]	c	*c*	g	g	b	b	b
c. Rest of AQCR	c	*c*	a	e	b	b	b
Huntington (W. Virginia)-Ashland (Kentucky)-Portsmouth-Ironton (Ohio) Interstate:							
a. Boyd Co. [1]	c	*c*	g	g	b	b	*g*
b. Rest of AQCR	c	*c*	b	b	b	b	b
Louisville Interstate [1]	c	c	j	j	b	*d*	h
Metropolitan Cincinnati Interstate:							
a. Boone Co. [1]	c	*c*	a	d	b	*d*	h
b. Campbell Co. [1]	c	*c*	a	d	b	*d*	h
c. Kenton Co. [1]	c	*c*	a	d	b	*d*	h
d. Rest of AQCR	c	*c*	a	*d*	b	*d*	c
North Central Kentucky Intrastate	a	*c*	b	b	b	b	b
Paducah (Kentucky)-Cairo (Illinois) Interstate:							
a. McCracken Co. [1]	c	c	g	f	b	b	b
b. Muhlenberg Co. [1]	c	c	g	g	b	b	b
c. Rest of AQCR	c	*c*	a	f	b	b	b
South Central Kentucky Intrastate	b	b	b	b	b	b	b

[1] See § 81.318 of this chapter to identify the specific nonattainment area.

NOTE.—Dates or footnotes in italics are prescribed by the Administrator because the plan did not provide a specific date or the dates provided were not acceptable. Sources subject to plan requirements and attainment dates established under Section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.926 (1979 edition).

a. Air quality levels presently below primary standards or area is unclassifiable.
b. Air quality levels presently below secondary standards or area is unclassifiable.
c. April 1975.
d. July 1975.
e. July 1977.
f. July 1978.
g. December 31, 1982.
h. December 31, 1987.
i. To be determined later.
j. January 1, 1985.

4. Section 52.928 is revised to read as follows:

§ 52.928 Control strategy: Sulfur oxides.

(a) Part D—Conditional approval.

(1) Boyd County nonattainment area. The 1979 sulfur dioxide revisions for this area are approved on condition that the following be submitted by July 1, 1981:

(i) An enforceable regulation for continually determining compliance with Kentucky regulation 401 KAR 61:015 Section 5(4).

(ii) A revision of regulation 401 KAR 61:015 providing increments of progress in compliance schedules applicable to sources which are being made subject to more stringent emission limits.

(iii) A commitment, with regard to ambient monitoring around the Ashland Oil complex, that the monitoring will begin by a certain date, will be conducted for a specific length of time, and will be done with a Federal equivalent method.

(2) Jefferson, McCracken, Muhlenberg, and Webster Counties. The 1979 sulfur dioxide revisions for these nonattainment areas are approved on condition that the State submit by July 1, 1981, a revision of regulation 401 KAR 61:015 providing increments of progress in compliance schedules applicable to sources which are being made subject to more stringent emission limits.

5. A new § 52.936 is added as follows:

§ 52.936 Rules and regulations.

(a) Section 8(2)(a) of regulation 401 KAR 61:015 is disapproved in that it allows the Tennessee Valley Authority's Shawnee power plant until October 1, 1981, to achieve compliance with emissions limits which are not made more stringent by the 1979 Part D revisions, and which the source was previously required to meet by July 1, 1977.

(b) Section 8(2)(d) of regulation 401 KAR 61:015 is disapproved in that it allows sources until December 31, 1982, to achieve compliance with emission limits which are not made more stringent by the 1979 Part D revisions, and which the sources were previously required to meet prior to 1979.

[FR Doc. 80-33942 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 81

[A-3-FRL 1649-1]

Approval of Revision to Section 107 Air Quality Designations for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Commonwealth of Pennsylvania has revised its list of air quality attainment status designations for nine areas within the Southeast Pennsylvania Air Basin, with respect to particulate matter (TSP). In this notice, the Administrator is approving the reclassification of six municipalities adjacent to Lansdale Borough from unclassified to attainment. In addition, the Administrator is approving the reclassification of three other municipalities from attainment to unclassified.

DATE: These revisions become effective on or before December 1, 1980.

ADDRESSES: Copies of the associated support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: Harold A. Frankford (3AH12)

Pennsylvania Department of Environmental Resources, Bureau of Air Quality and Noise Control, Fulton Building, 18th Floor, 200 North Third Street, Harrisburg, PA 17120, Attn: James Salvaggio

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Mr. Harold A. Frankford (3AH12), U.S. Environmental Protection Agency, Region III, Curtis Building, 10th floor, Philadelphia, PA 19106, Phone: 215/597-8392.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1978 and August 26, 1979, the Commonwealth of Pennsylvania submitted a request for redesignation of attainment status with respect to total suspended particulates for nine municipalities located in the

Southeast Pennsylvania Air Basin (this area corresponds to the Pennsylvania portion of the Metropolitan Philadelphia Interstate Air Quality Control Region). The specific reclassifications are described as follows:

A. Unclassified to Attainment

The Commonwealth has requested reclassification for six municipalities (Montgomery Township, Towamencin Township, Upper Gwynedd Township, Hatfield Township, Hatfield Borough and North Wales Borough) adjacent to Lansdale Borough, which had originally been designated a nonattainment area for secondary TSP standards. Lansdale has since been redesignated as an attainment area for TSP, 45 FR 9262 (1980). The most recently available air quality data provided by the Commonwealth show no violations of TSP standards in this area.

B. Attainment to Unclassified

The Commonwealth has requested reclassification for the municipalities of Doylestown Township, Upper Moreland Township, and Downingtown Borough. During 1977, all three municipalities recorded violations of the secondary TSP standard, whereas prior historical data had not shown an incidence of air quality violations for TSP. During 1979, the monitor in Downingtown was discontinued, and the Doylestown monitor did not record any further TSP violations. The Willow-Grove (Upper Moreland) monitor has recorded violations of the secondary TSP standards, but EPA has judged that the monitor is improperly located such that the violations represent undue localized influences, rather than ambient air. In view of the above, an "unclassified" designation is appropriate for all three municipalities.

Proposed Rulemaking Actions/ Summary of Public Comments

On July 2, 1979, 44 FR 38585, EPA proposed redesignation of the Doylestown, Downingtown, and Upper Moreland areas. Similarly, on November 21, 1979, 44 FR 66850, EPA proposed redesignation of the six municipalities surrounding Lansdale Borough. During the respective comment periods following publication of these notices, no comments were received.

EPA Actions

In view of the above evaluation, the Administrator approves the redesignation of attainment status for the nine municipalities discussed in this notice. In conjunction with the Administrator's approval actions, the charts contained in 40 CFR 81.339 are revised accordingly.

All other Section 107 designations for the Commonwealth of Pennsylvania not discussed in this notice remain intact.

Although this action is being taken as a final rule, EPA will consider comments at any time and make appropriate changes in attainment designations. Comments should be sent to Mr. Robert Blanco, Acting Chief Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, 10th floor, 6th & Walnut Streets, Philadelphia, PA 19106.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether 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 requirements of Executive Order 12044.

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

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended by revising the table entitled "Pennsylvania-TSP" in § 81.339 to read as follows:

Subpart C—Section 107 Attainment Status Designations

§ 81.339 Pennsylvania.

* * * * *

Section 81.339

Pennsylvania—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
I. Metropolitan Philadelphia Interstate AQCR:				
(A) City of Philadelphia:				
Census tracts: 1-12, 125-142, 144-157, 162-177, 190-205, 293, 294, 298-302, 315-321, 323, 325, 326, 329-332.		X		
Census tracts: 13-75, 143, 158-161, 178-189, 295-297, 322, 324, 327.			X	
Balance of City				X
(B) Montgomery County:				
Conshohocken Boro		X		
West Conshohocken Boro			X	
Lower Merion Boro			X	
Narberth Boro			X	
Upper Merion Twp			X	
Bridgeport Boro			X	
Norristown Boro			X	
Plymouth Twp			X	
Whitemarsh Twp			X	
Lansdale Boro				X
Pottstown Boro		X		
West Pottsgrove Twp			X	
Upper Pottsgrove Twp			X	
Lower Pottsgrove Twp			X	
Upper Providence Twp			X	
(C) Chester County:				
South Coatesville Boro		X		
City of Coatesville			X	
Caln Twp			X	
East Fallowfield Twp			X	
Modena Boro			X	
Valley Twp			X	
North Coventry Twp			X	
East Coventry Twp			X	
Pheoenixville Boro		X		
Schuylkill Twp			X	
Downingtown Boro			X	
(D) Bucks County:				
Doylestown Twp			X	
(E) Remaining Pennsylvania Portion of AQCR				X

[FR Doc. 80-33943 Filed 10-30-80; 8:45am]

BILLING CODE 6560-3-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 55a

Program Grants for Black Lung Clinics

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The Public Health Service revises the regulations governing the grants program for black lung clinics established under section 427(a) of the Federal Mine Safety and Health Act of 1977. The new regulations reflect recent changes, both in the way health services are delivered and in specific diagnostic and treatment procedures required in the management of black lung.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Beacham, Director, Regional Commissions Health Programs, Bureau of Community Health Services, Room 7A–55, 5600 Fishers Lane, Rockville, Maryland 20857 (301–443–5033).

SUPPLEMENTARY INFORMATION: On February 12, 1980 the Public Health Service published a Notice of Proposed Rulemaking (NPRM) to revise the regulations (42 CFR Part 55a) governing the Black Lung Clinics Program established by section 427(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 927(a)) (45 FR 9298). This program assists public and private nonprofit entities in constructing, purchasing and operating clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in coal miners. The major functions of these clinics are to provide services to minimize the effects of respiratory and pulmonary impairments in coal miners and to perform examinations in connection with black lung disability benefits claims filed with the Department of Labor.

Representatives of six organizations commented on the proposed rules. The Department's response to these comments and the actions taken are set forth below. The comments and responses have been arranged to correspond to the order of the regulation.

1. Eligibility requirements for Black Lung Clinics Program grants

Four of those commenting were concerned about deletion of the provision limiting entities which may apply for grants to organizations which are designated by State Governors. They each suggested adding a new section to provide that the Governor may retain the authority for designating the agency or agencies to administer a Black Lung Clinics Program in those States having an existing statewide program.

The Department maintains its position that the broadened eligibility criteria will allow existing mechanisms, such as the Health Systems Agencies and State Health Planning and Development Agencies, to play a greater role in coordinating and developing black lung services. This will increase the voice of consumers in the earliest stage of program development and encourage consistency with existing health services delivery programs. There also will be a wider range of prospective applicants. At the same time, Governors will continue to have the flexibility to participate as fully as they wish in the administration of this program within their States. The application procedure established under Office of Management and Budget Circular A–95, which provides Governors an opportunity to participate in program development, is required of all HHS grantees. Nevertheless, the Department is sensitive to State concerns that existing statewide programs be neither fragmented or duplicated. Therefore, the criteria for deciding which applications to fund have been amended to include whether proposed services are complementary to and nonduplicative of existing services (see § 55a.6(a)(5)).

2. Sliding fee schedule

One comment contended that a sliding fee schedule tied to the Community Services Administration *Income Poverty Guidelines* for persons unable to pay the full cost of care would require a means test, and that such a test would pose a barrier to miners who need the services. It was recommended that third-party payments be accepted as full payment for services rendered. The regulation does not require a means test. Most projects have a method for determining what portion of charges a patient should pay which is circumspect and maintains the patient's dignity. It is the intent of the regulation to require grantees to provide services to all, regardless of ability to pay, in a manner that preserves the dignity of patients. Most potential grantees already have arrangements for discounts for all indigent persons, and the Department does not want to disrupt those arrangements insofar as black lung patients are concerned. Therefore, no substantive changes in § 55a.4(b) have been made, but the requirement to provide services without regard for ability to pay for them has been given greater prominence in this section.

3. Role of third-party payors.

One comment favored sending medical treatment plans to third-party payors for comment, if not approval. Third-party payors do have an opportunity to negotiate with the clinics regarding treatment protocols under which individuals would receive treatment paid for by the third-party payors. This is implicit in § 55a.4(b)(3)(iii) which requires clinics to both bill for and make every reasonable effort to obtain payment for services reimbursable by third-party payors. The Department feels that this provides third-party payors an appropriate role in the treatment process without infringing on the confidentiality of individual patient information.

4. Role of the medical specialist in pulmonary diseases.

One comment expressed concern that the requirements for the involvement of a specialist in lung disease were inadequate. No change has been made in the regulations. It is the Department's view that the provision requiring medical services to be performed in consultation with a physician with special training or experience in the diagnosis and treatment of respiratory diseases is sufficient (§ 55a.4(b)(5)). The regulation allows grantees the flexibility to be responsive to the local availability of consultation from specialists in lung disease.

5. The policy board or advisory committee to the policy board.

In response to the comment that representatives of the coal industry should be included in the membership of the policy board or advisory committee, § 55a.4(c) has been revised to note this representation. In addition, the Department has made some technical changes to this provision, some of which are in response to a suggestion that the intended relationship between the grantee's policy board and the required consumer advisory committee may become confused.

6. Outreach.

One comment objected to the requirement for outreach, apparently construing it to be for claimant location. The outreach services required of a black lung clinic (§ 55a.5(a)(3)) are to increase access to clinic services. Under

§ 55a.7, it is stated that project funds may be used for outreach programs to inform coal miners of clinic services. These provisions have not been altered.

7. Use of grant funds.

In the proposed rule, § 55a.7 listed the specific uses that may be made of project funds (e.g., construction, purchase and operation of clinical facilities). As revised in this final rule, § 55a.7 states that "A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and the regulations of this part." Section § 55a.7 has been revised as part of the Department's "Operation Common Sense" to delete duplication of the Department's grant administration regulations (45 CFR Part 74). Subpart Q identifies the principles to be used in determining costs applicable to all Departmental grants and sets standards for allowable costs. Although not specified in the revised § 55a.7, project funds may be used for construction, purchase, and operation of clinical facilities; renovation or modernization of existing space; purchase of medical equipment; salaries of additional personnel; home treatment service; transportation of patients; training of personnel; outreach programs to inform coal miners of the services provided by the clinics; and actual expenses of public participants in program development or oversight; but may not be used for salaries of persons in positions previously supported from other sources.

As noted in the preamble to the proposal, however, capital expenditure authorities will be used only under unusual circumstances. Applicants who request funds to operate a Black Lung Clinic will generally be expected to possess suitable space. Only in cases where no applicant with access to space through current ownership or ability to rent proposes to serve miners needing services will applications for construction, acquisition, or modernization be considered. Such applications will be required to demonstrate that no existing space is adequate and available to serve a particular population of miners. It is expected that the capital spending authority will be only sparingly invoked.

Finally, several additional Department regulations which apply to grants made under this part have been specified in § 55a.8.

Accordingly, Part 55a of Title 42, Code of Federal Regulations, is revised as set forth below.

(Catalog of Federal Domestic Assistance Program No. 13.965 (Coal Miners, Respiratory Impairment Treatment, Clinic and Services (Black Lung Clinic)) The reporting requirements contained in these regulations have been reviewed and approved by the Office of Management and Budget (OMB Approval No. 68R-1734).

Dated: October 22, 1980.

Approved: October 28, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Patricia Roberts Harris,

Secretary.

PART 55a—PROGRAM GRANTS FOR BLACK LUNG CLINICS

Sec.

Authority: Sec. 508, 83 Stat. 803; 30 U.S.C. 937.

§ 55a.1 To whom do these regulations apply?

This part applies to the award of grants pursuant to section 427(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 937(a)). These grants support the operation of clinical facilities known as Black Lung Clinics, for analysis, examination and treatment of respiratory and pulmonary impairments in coal miners.

§ 55a.2 Definitions.

Any term not defined here shall have the meaning given it in the Act. As used in this part:

"Act" means the Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 801 et seq.).

"Applicant" means any public or nonprofit private agency or institution which files an application for a grant under this part.

"Miner" or "coal miner" means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. The term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent that the individual was exposed to coal dust as a result of employment.

"Nonprofit," as applied to an agency or institution, means that no part of the net earnings of such agency or institution benefits, or may lawfully benefit, any private shareholder or individual.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved may be delegated.

§ 55a.3 Who is eligible to apply for a Black Lung Clinics grant?

(a) Any public or private nonprofit entity may apply for a grant under this part.

(b) Eligible projects: grants pursuant to section 427(a) of the Act and this part may be made to eligible applicants for carrying out area or statewide clinical services for the analysis, examination, and treatment of occupational respiratory and pulmonary impairments in coal miners.

§ 55a.4 What must an application for a Black Lung Clinics grant contain?

An approvable application must contain each of the following:

(a) A plan for the provision of the services required by this part containing at least the following elements:

(1) A description of the target population to whom services are to be provided, including a statement of the need for services;

(2) A description of the area in which the target population resides, including descriptions of geographical barriers to service, availability of transportation, and each of the health service providers in the area which provide any of the services required under this part;

(3) A statement of the goals and objectives of the program, how the program intends to achieve them, and how progress toward their achievement will be measured;

(4) A description of how existing resources in the community will be utilized to maximize the effectiveness and efficiency of the use of grant funds; and

(5) Letters of intent from each entity which is expected to provide any service under the Black Lung Clinics Program, including a statement that, contingent upon a grant award, services will be provided in accordance with the requirements under this part.

(b) An assurance that, should an award be made, the grantee will enter

into binding agreements with each of the listed clinics providing letters of intent which shall include provisions that:

(1) No person will be denied services because of inability to pay;

(2) Services will be made available regardless of how long the miner has lived in the service area or whether anyone referred the miner to the clinic;

(3) Services will be made available in a manner calculated to preserve human dignity and to maximize acceptability and utilization of services;

(4) Charges shall be made for services rendered as follows:

(i) a schedule shall be maintained listing fees or payments for the provision of services, designed to cover reasonable costs of operation;

(ii) a schedule of discounts adjusted on the basis of a patient's ability to pay shall be maintained. The schedule of discounts must provide for a full discount to individuals and families with annual incomes at or below the levels set forth in the most recent Community Services Administration *Income Poverty Guidelines* at 42 CFR 1060.2 (except that nominal fees for service may be collected from individuals and families with annual incomes at or below those levels if imposition of the fees is consistent with project goals). No discounts shall be provided to individuals and families with annual incomes greater than twice those set forth in the Guidelines;

(iii) where third-party payors (including Government agencies) are authorized or under a legal obligation to pay all or a portion of such charges, all services covered by that reimbursement plan will be billed and every reasonable effort will be made to obtain payment; and

(iv) where the cost of care and services furnished under the program is to be reimbursed under Title XIX of the Social Security Act, a written agreement with the Title XIX agency will be obtained by the clinic unless the Title XIX agency refuses to enter into the agreement and the clinic provides evidence of the refusal to the grantee.

(5) Grant funds will be used to supplement and not supplant existing services.

(6) Medical services will be performed in consultation with a physician with special training or experience in the diagnosis and treatment of respiratory diseases.

(c) A description of how each clinic or group of clinics will assure consumer participation in the development of policy applicable to the administration and delivery of black lung clinic services through a policy board or an advisory committee to the policy board. If the policy board consists of a majority of miners or miner-selected representatives, this requirement is satisfied. If this is not the case, an advisory committee to the policy board with a majority of miners or miner-selected representatives, but also including interested parties, such as health care providers, coal industry employers, representatives of third-party payors, and the general public, must be established. Procedures for the functioning of the advisory committee must be adopted which assure continued ability to represent the varied points of view, including that of consumers, and that committee recommendations are promptly referred to the policy board for consideration.

(d) Evidence that a copy of the application was forwarded to each of the affected health systems agencies designated under Title XV of the Public Health Service Act with a request that the agency review and approve the application and forward its comments to the Secretary. Regulations applying to health systems agencies appear in 42 CFR Part 122.

(e) Evidence that the application was sent to the appropriate A–95 Clearinghouse(s) for review and comment, in compliance with Office of Management and Budget Circular No. A–95, Revised.

§ 55a.5 What requirements must a Black Lung Clinic meet?

For inclusion in an applicant's plan, clinics must now, or with grant assistance be able to:

(a) Provide for the following services:

(1) Primary care;

(2) Patient and family education and counseling;

(3) Outreach;

(4) Patient care coordination, including individual patient care plans for all patients;

(5) Antismoking advice; and

(6) Other symptomatic treatments.

(b) Meet all criteria for approval and designation by the Department of Labor under 20 CFR Part 725 to perform disability examinations and provide treatment under the Act.

§ 55a.6 What criteria has HHS established for deciding which grant applications to fund?

(a) Within the limits of funds available for these purposes, the Secretary may award grants to assist in the carrying out of those programs which will in the Secretary's judgment best promote the purposes of section 427(a) of the Act, taking into account:

(1) The number of miners to be served and their needs;

(2) The quality and breadth of services to be provided;

(3) The degree to which other resources are committed to the program;

(4) The applicant's ability to manage the proposed program, including its experience with the delivery of medical services by clinical facilities and its ability to make rapid and effective use of the grant funds; and

(5) Whether proposed services are complementary to and nonduplicative of existing services, particularly in States or Regions where there are existing programs which are determined to be meeting or making satisfactory progress toward meeting identified needs.

(b) The notice of grant award specifies how long the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 3 to 5 years.

(c) Generally the grant initially will be for 1 year and subsequent continuation awards also will be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(d) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 55a.7 How may project funds be used?

A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and the regulations of this part.

§ 55a.8 What other HHS regulations apply?

Several other HHS regulations apply to grants under this part. These include, but are not limited to:

42 CFR Part 50—Policies of general applicability

42 CFR Part 122—Health systems agency reviews of certain proposed uses of Federal health funds

45 CFR Part 16—Department grant appeals process
45 CFR Part 19—Limitation on payments or reimbursements for drugs
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health, Education, and Welfare—Effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedures for hearings under Part 80 of this title
45 CFR Part 84—Nondiscrimination on the basis of handicap in federally assisted programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91 [1]—Nondiscrimination on the basis of age in Department programs or activities receiving Federal financial assistance

§ 55a.9 What confidentiality requirements must be met?

All information as to personal facts and circumstances obtained by the grantee's staff about recipients of services shall be held confidential, and shall not be disclosed without the individual's consent except as may be required by law or as may be necessary to provide service to the individual or to provide for medical audits by the Secretary with appropriate safeguards for confidentiality of patient records. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

[FR Doc. 80-34040 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

Simultaneous Oil and Gas Leasing System; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correction.

SUMMARY: The final rulemaking published in the **Federal Register** of May 23, 1980 (45 FR 35156), contained an error in the amendatory language as it referred to section 3102.2. This notice is being published to correct that error.

EFFECTIVE DATE: October 31, 1980.

[1] When issued.

ADDRESS: Any suggestions or inquiries should be sent to: Director (530), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Robert C. Bruce, 202–343–8735, or Charles E. Weller, 202–343–7753.

On page 35161, the amendatory language in item 6. is corrected to read as follows:

6. Sections 3102.1, 3102.1–1 and 3102.1–2 are deleted and replaced by a revised § 3102.1 as follows:

Daniel P. Beard,

Deputy Assistant Secretary of the Interior.

October 29, 1980.

[FR Doc. 80-34121 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA 5940]

List of Communities With Special Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program. The identification of such areas is to provide guidance to communities on the reduction of property losses by the adoption of appropriate flood plain management or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATES: The effective date shown at the top right of the table or December 1, 1980, whichever is later.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in an identified flood plain area having special flood hazards that is located within any community participating in the National Flood Insurance program.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction in these areas unless the community has entered the program. The prohibition, however, does not apply in respect to conventional mortgage loans by federally regulated, insured, supervised, or approved lending institutions.

This 30 day period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The six months period shall be considered to begin on or before December 1, 1980, or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the **Federal Register** or the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with Part 64 of Title 44 of the Code Federal Regulations as authorized by the National Flood Insurance program (42 U.S.C. 4001–4128).

Section 65.3 is amended by adding in alphabetical sequence a new entry to the table:

BILLING CODE 6718-03-M

§ 65.3 List of communities with special hazard areas (FHBM's in effect).

EFFECTIVE DATE November 4, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF		10 PREVIOUS MAP DATES		11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
								FHBM	FIRM	FHBM	FIRM				
UT	490177	City of St. George (Washington County)	0001C 0002C	I	FL	B	1	3	1	8-16-74 6-11-76 11-22-77	N/A	8 9 10	N/A	N/A	The Honorable James G. Larkin Mayor, City of St. George 237 North Bluff St. George, UT 84770 (801) 673-3593

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
IL	171005A	Village of Hainesville (Lake Co.)	Index 01	I	FL	B	4	2	1	N/A	N/A	6	N/A	N/A	George Benjamin, Mayor P.O. Box 271 Grayslake, IL 60030 Phone: (312) 223-7379
PA	421461	Twp. of Burnside (Centre Co.)	Index 0001A 0002A 0003A 0005A	I	FL	B	1	3	1	11/ 8/74	N/A	9 10 16	N/A	N/A	Arthur McCullough, Chairman Twp. Board of Supervisors R.D. Karthaus, PA 16845 Phone: (814) 387-6324
PA	421174	Twp. of Clymer (Tioga Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	1	1/17/75	N/A	9 10 16	N/A	N/A	Carl King, Chairman Twp. Board of Supervisors Sabinsville, PA 16943 Phone: (814) 628-2724
PA	421856	Twp. of Hamilton (McKean Co.)	Index 0001A 0002A 0003A 0004A 0005A	I	FL	B	1	3	1	2/14/75	N/A	9 10 16	N/A	N/A	Joseph Kasaback, Chairman Twp. Board of Supervisors Ludlow, PA 16333 Phone: (814) 945-6540
PA	422102	Twp. of Hartley (Union Co.)	Index 0001A 0003A 0004A 0005A	I	FL	B	1	3	1	12/20/74	N/A	9 10 16	N/A	N/A	John Bohn, Chairman Twp. Board of Supervisors Laurelton, PA 17835 Phone: (717) 922-1009

EFFECTIVE DATE November 12, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF		10 PREVIOUS MAP DATES		11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
								FHBM	FIRM	FHBM	FIRM				
ND	380264	Township of Normanna (Cass County)	0001A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mr. Harold Thrane, Chairman Normanna Township Commissioners Kindred, ND 58051 (701) 428-3385
WA	530038	City of East Wenatchee (Douglas County)	0001B	I	FL	B	1	3	1	4-29-77	N/A	8 9	N/A	N/A	The Honorable Forrest Lannoye Mayor, City of East Wenatchee P.O. Box 0159 East Wenatchee, WA 98801 (509) 884-4858

EFFECTIVE DATE November 12, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF		10 PREVIOUS MAP DATES		11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
								FHBM	FIRM	FHBM	FIRM				
ID	160213	Idaho County (Unincorporated Areas)	0009A 0010A 0017A 0018A 0024A 0025A 0026A 0027A 0033A 0034A 0035A 0036A 0038A 0043A 0044A 0045A 0046A 0048A 0053A 0054A 0063A 0070A 0071A 0072A 0079A 0086A	I	FL	B	6	2	1	N/A	N/A	N/A	N/A	N/A	Mr. Douglas Higgins County Commissioner Idaho County Courthouse Grangeville, ID 83530 (208) 983-2390

EFFECTIVE DATE 11/14/80

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
NY	360266	V. Keeseville (Essex & Clinton)	0001A	I	FL	B	4	3	1	5/31/74 5/21/76	N/A	8 10	N/A	N/A	Wilfred Blaise, Mayor Village Office Box 426 Keeseville, NY 12944
TN	470335	C. Dickson (Dickson Co.)	0001A 0002A 0003A	I	FL	B	4	3	1	7/9/76	N/A	8 9 10	N/A	N/A	The Honorable J. Dan Bukner, Mayor 202 South Main Street Dickson, TN 37055
MS	280319	T. Quitman (Clarke Co.)	0005A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Franklin Stay, Mayor P.O. Box 16 Quitman, MS 39355
NJ	340256	Twp. West Windsor (Mercer Co.)	0005B 0010B	I	FL	B	1	3	1	7/19/74 9/24/76	N/A	8 9	N/A	N/A	The Honorable Carol Beske, 4 Berkshire Drive, Princeton Junction, NJ 08550
TN	470169	T. Smyrna (Rutherford Co.)	0005C 0010C	I	FL	B	1	3	1	5/31/74 7/30/76 5/20/77	N/A	8 9 10	N/A	N/A	John Sam Ridley, Mayor P.O. Box 128 Smyrna, TN 37167

EFFECTIVE DATE November 14, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	421519	Township of Chest (Clearfield Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	1	11/15/74	N/A	9 10 16	N/A	N/A	Irvan Holes, Chairman Twp. Board of Supervisors R.D. 1 La Jose, PA 15753 Phone (814) 277-9929
PA	421885	Township of Chestnut Hill (Monroe Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	1	11/15/74	N/A	9 10 16	N/A	N/A	Albert Frantz, Chairman Twp. Board of Supervisors Brodheadsville, PA 18322 Phone: (717) 992-4987
PA	421526	Township of Karthaus (Clearfield Co.)	Index 0002A 0003A 0004A	I	FL	B	1	3	1	11/29/74	N/A	9 10 16	N/A	N/A	Eugene Shadeck, Chairman Twp. Board of Supervisors Karthaus, PA 16845 Phone: (814) 263-4565
PA	421614	Township of Spring Creek (Elk Co.)	Index 0001A 0002A 0003A 0004A 0005A	I	FL	B	1	3	1	12/ 6/74	N/A	9 10 16	N/A	N/A	Ronald Shick, Chairman Twp. Board of Supervisors Portland Mills, PA 15850 Phone: None
PA	421470	Township of Union (Centre Co.)	Index 0002A 0003A 0004A	I	FL	B	1	3	1	11/ 8/74	N/A	9 10 16	N/A	N/A	Ernest Ammerman, Chairman Twp. Board of Supervisors R.D. 1 Julian, PA 16844 Phone: (814) 355-0238

EFFECTIVE DATE November 18, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF		10 PREVIOUS MAP DATES		11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
								FHBM	FIRM	FHBM	FIRM				
TX	481565	Fayette County Water Control & Improvement District, Monument Hill (Fayette County)	0001A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mr. Warren Kubecka President of Water Control Board P.O. Box 793 Lagrange, TX 78945 (713) 968-6461

EFFECTIVE DATE 11/28/80

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (NO. AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
NY	361374	Town of Erin (Chemung Co.)	0005 A 0015 A 0020 A 0025 A 0030 A	I	FL	B	1	3	1	1/10/75	N/A	10	N/A	N/A	Merton Schanbacher, Supervisor Town of Erin Erin, New York 14838 (607) 739-1068
NY	361602	T. of Hartsville (Steuben Co.)	0005 A 0010 A 0015 A 0020 A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mr. Deyo Mayo, Supervisor 5159 Purdy Creek Road Hornell, New York 14843 (607) 698-4378
KY	210292	Morgan County	0025 A 0050 A 0075 A 0100 A 0125 A 0150 A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mr. Gene Allen, Co. Judge Executive Morgan Co. Courthouse West Liberty, KY 41472 (606) 743-3026
VT	500004	Town of Goshen (Addison Co.)	0005 B 0010 B	I	FL	B	1	3	1	12/20/75	N/A	9 10	N/A	N/A	J. Douglas Graham, Selectman R.D. 3 Brandon, VT 05733

EFFECTIVE DATE November 28, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
IL	170508	City of Keithsburg (Mercer Co.)	0001D	I	FL	B	1	3	1	2/15/74 8/01/75 2/13/76 7/27/79	N/A	9 10 16	N/A	N/A	Benjamin Munson Acting Mayor City Hall 4th & Main Street Keithsburg, IL 61442 Phone: 309-374-2369
PA	420826	Boro. of Roseville (Tioga Co.)	0001A	I	FL	B	4	3	1	12/13/74	N/A	9	N/A	N/A	Roland Smith, Mayor R.D.2 Mansfield, PA 16933 Phone: 717-549-4642

BILLING CODE 6718-03-C

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 20, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33794 Filed 10-30-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 12

Federal Property Assistance Program; Disposal and Utilization of Surplus Real Property for Public Health Purposes

AGENCY: Office of the Secretary, HHS.

ACTION: Final regulation.

SUMMARY: The Department of Health, Education, and Welfare conveyed Federal surplus real property for educational and public health purposes under the authority of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) (Catalog of Federal Domestic Assistance Program Number 13.676 Surplus Property Utilization.) The Department of Education Organization Act (Pub. L. 96–88, enacted October 17, 1979) establishes the Department of Education and transfers to the new executive Department the authority of the Secretary of Health, Education, and Welfare to dispose of surplus real property for educational purposes. Therefore, this publication deletes from the regulations of the former Department of Health, Education, and Welfare all reference to disposal and utilization of surplus real property for educational purposes and redesignates the Department of Health, Education, and Welfare as the Department of Health and Human Services.

EFFECTIVE DATE: May 4, 1980.

FOR FURTHER INFORMATION CONTACT: C. A. Patterson, Director, Office of Real Property, Department of Health and Human Services, Room 4715, 330 Independence Avenue, S.W., Washington, D.C. 20201. Telephone: (202) 245–1926.

SUPPLEMENTARY INFORMATION: Publication of this rule as a proposal for public comment is unnecessary as it deals only with the removal of reference to education from the regulations published in the **Federal Register**, Vol. 42, No. 225, on November 22, 1977.

Dated: August 20, 1980.

Wilford J. Forbush,

Acting Assistant Secretary for Management and Budget.

Approved: October 23, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS REAL PROPERTY FOR PUBLIC HEALTH PURPOSES

Sec.

Authority: The provisions of this part 12 issued under sec. 203, 63 Stat. 385, as amended; 40 U.S.C. 484.

§ 12.1 Definitions.

(a) "Act" means the Federal Property and Administrative Services Act of 1949, 63 Stat. 377 (40 U.S.C. 471 et seq.). Terms defined in the Act and not defined in this section have the meanings given to them in the Act.

(b) "Accredited" means having the approval of a recognized accreditation board or association on a regional, State, or national level, such as a State Board of Health. "Approval" as used above describes the formal process carried out by State Agencies and institutions in determining that health organizations or programs meet minimum acceptance standards.

(c) "Administrator" means the Administrator of General Services.

(d) "Assigned property" means real and related personal property which, in the discretion of the Administrator or his designee, has been made available to the Department for transfer for public health purposes.

(e) "Department" means the U.S. Department of Health and Human Services.

(f) "Disposal agency" means the executive agency of the Government which has authority to assign property to the Department for transfer for public health purposes.

(g) "Excess" means any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.

(h) "Fair market value" means the highest price which the property will bring by sale in the open market by a willing seller to a willing buyer.

(i) "Holding agency" means the Federal agency which has control over and accountability for the property involved.

(j) "Nonprofit institution" means any institution, organization, or association, whether incorporated or unincorporated, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held to be tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(k) "Off-site property" means surplus buildings, utilities and all other removable improvements, including related personal property, to be transferred by the Department for removal and use away from the site for public health purposes.

(l) "On-site" means surplus real property, including related personal property, to be transferred by the Department for use in place for public health purposes.

(m) "Public benefit allowance" means a discount on the sale or lease price of real property transferred for public health purposes, representing any benefit determined by the Secretary which has accrued or may accrue to the United States thereby.

(n) "Related personal property" means any personal property: (1) Which is located on and is (i) an integral part of, or (ii) useful in the operation of real property; or (2) which is determined by the Administrator to be otherwise related to the real property.

(o) "Secretary" means the Secretary of Health and Human Services.

(p) "State" means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

(q) "Surplus" when used with respect to real property means any excess real property not required for the needs and the discharge of the responsibilities of all Federal agencies as determined by the Administrator.

§ 12.2 Scope.

This part is applicable to surplus real property located within any State which is appropriate for assignment to, or which has been assigned to, the Department for transfer for public health

purposes, as provided for in section 203(k) of the Act.

§ 12.3 General Policies.

(a) It is the policy of the Department to foster and assure maximum utilization of surplus real property for public health purposes, including research.

(b) Transfers may be made only to States, their political subdivisions and instrumentalities, tax-supported public health institutions, and nonprofit public health institutions which have been held tax exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(c) Real property will be requested for assignment only when the Department has determined that the property is suitable and needed for public health purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for public health purposes or will be so needed within the immediate or foreseeable future. Where construction or major renovation is not required or proposed, the property must be placed into use within twelve (12) months from the date of transfer. When construction or major renovation is contemplated at the time of transfer, the property must be placed in use within 36 months from the date of transfer. If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Department for each month thereafter during which the proposed use has not been implemented or take such other action as set forth in § 12.12 as is deemed appropriate by the Department. Such monthly payments shall be computed on the basis of the current fair market value of the property at the time of the first payment by subtracting therefrom any portion of the purchase price paid in cash at the time of transfer, and by dividing the balance by the total number of months in the period of restriction. If the facility has not been placed into use within eight (8) years of the date of the deed, title to the property will be revested in the United States, or, at the discretion of the Department, the restrictions and conditions may be abrogated in accordance with § 12.9

(d) Transfers will be made only after the applicant has certified that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations.

(e) Organizations which may be eligible include those which provide care and training for the physically and mentally ill, including medical care of the aged and infirm, clinical services, other public health services (including water and sewer), or similar services devoted primarily to the promotion and protection of public health. Services which have as their principal purpose the providing of custodial or domiciliary care are not eligible. The property applied for must be for a purpose which the eligible organization is authorized to carry out.

(f) An applicant's plan of operation will not be approved unless it provides that the applicant will not discriminate because of race, color, sex, handicap, or national origin in the use of the property.

§ 12.4 Limitations.

(a) Surplus property transferred pursuant to this part will be disposed of on an "as is, where is," basis without warranty of any kind.

(b) Unless excepted by the General Services Administrator in his assignment, mineral rights will be conveyed together with the surface rights.

§ 12.5 Awards.

Where there is more than one applicant for the same property, it will be awarded to the applicant having a program of utilization which provides, in the opinion of the Department, the greatest public benefit. Where the property will serve more than one program, it will be apportioned to fit the needs of as many programs as is practicable.

§ 12.6 Notice of available property.

Reasonable publicity will be given to the availability of surplus real property which is suitable for assignment to the Department for transfer for public health uses. The Department will establish procedures reasonably calculated to afford all eligible users having a legitimate interest in acquiring the property for such uses an opportunity to make an application therefor. However, publicity need not be given to the availability of surplus real property which is occupied and being used for eligible public health purposes at the time the property is declared surplus, the occupant expresses interest in the property, and the Department determines that it has a continuing need therefor.

§ 12.7 Applications for surplus real property.

Applications for surplus real property for public health purposes shall be made to the Department through the Regional Office specified in the notice of availability.

§ 12.8 Assignment of surplus real property.

(a) Notice of interest in a specific property for public health purposes will be furnished the General Services Administrator by the Department at the earliest possible date.

(b) Requests to the Administrator for assignment of surplus real property to the Department for transfer for public health purposes will be based on the following conditions:

(1) The Department has an acceptable application for the property.

(2) The applicant is willing, authorized, and in a position to assume immediate care, custody, and maintenance of the property.

(3) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer.

(4) The applicant has the necessary funds, or the ability to obtain such funds, to carry out the approved program of use of the property.

§ 12.9 General disposal terms and conditions.

(a) Surplus real property transfers under this part will be limited to public health purposes. Transferees shall be entitled to a public benefit allowance in terms of a percentage which will be applied against the value of the property to be conveyed. Such an allowance will be computed on the basis of benefits to the United States from the use of such property for public health purposes. The computation of such public benefit allowances will be in accordance with Exhibit A attached hereto and made a part hereof.

(b) A transfer of surplus real property for public health purposes is subject to the disapproval of the Administrator within 30 days after notice is given to him of the proposed transfer.

(c) Transfers will be on the following terms and conditions:

(1) The transferee will be obligated to utilize the property continuously in accordance with an approved plan of operation.

(2) The transferee will not be permitted to sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of the property, or any part thereof, without the prior written authorization of the Department.

(3) The transferee will file with the Department such reports covering the utilization of the property as may be required.

(4) In the event the property is sold, leased or subleased, encumbered, disposed of, or is used for purposes other than those set forth in the approved plan without the consent of the Department, all revenues or the

reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by the Department, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of the Department. The provisions of this paragraph shall not impair or affect the rights reserved to the United States in paragraph (c)(6) of this section, or the right of the Department to impose conditions to its consent.

(5) Lessees will be required to carry all perils and liability insurance to protect the Government and the Government's residual interest in the property. Transferees will be required to carry such flood insurance as may be required by the Department pursuant to Pub. L. 93–234. Where the transferee elects to carry insurance against damages to or loss of on-site property due to fire or other hazards, and where loss or damage to transferred Federal surplus real property occurs, all proceeds from insurance shall be promptly used by the transferee for the purpose of repairing and restoring the property to its former condition, or replacing it with equivalent or more suitable facilities. If not so used, there shall be paid to the United States that part of the insurance proceeds that is attributable to the Government's residual interest in the property lost, damaged, or destroyed in the case of leases, attributable to the fair market value of the leased facilities.

(6) With respect to on-site property, in the event of noncompliance with any of the conditions of the transfer as determined by the Department, title to the property transferred and the right to immediate possession shall, at the option of the Department, revert to the Government. In the event title is reverted to the United States for noncompliance or voluntarily reconveyed, the transferee shall, at the option of the Department, be required to reimburse the Government for the decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the transferee to adapt the property to the public health use for which the property was transferred. With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by the Department, the right of occupancy and possession shall, at the option of the Department, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required at the option of the Department to reimburse the Government for the decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the lessee to adapt the property to the public health use for which the property was leased. With respect to any reverter of title or termination of leasehold resulting from noncompliance, the Government shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering title to or possession of the property.

Any payments of cash made by the transferee against the purchase price of property transferred shall, upon a forfeiture of title to the property for breach of condition, be forfeited.

(7) With respect to off-site property, in the event of noncompliance with any of the terms and conditions of the transfer, the unearned public benefit allowance shall, at the option of the Department, become immediately due and payable or, if the property or any portion thereof is sold, leased, or otherwise disposed of without authorization from the Department, such sale, lease or sublease, or other disposal shall be for the benefit and account of the United States and the United States shall be entitled to the proceeds. In the event the transferee fails to remove the property or any portion thereof within the time specified, then in addition to the rights reserved above, at the option of the Department, all right, title, and interest in and to such unremoved property shall be retransferred to other eligible applicants or shall be forfeited to the United States.

(8) With respect only to on-site property which has been declared excess by the Department of Defense, such declaration having included a statement indicating the property has a known potential for use during a national emergency, the Department shall reserve the right during any period of emergency declared by the President of the United States or by the Congress of the United States to the full and unrestricted use by the Government of the surplus real property, or of any portion thereof, disposed of in accordance with the provisions of this part. Such use may be either exclusive or nonexclusive. Prior to the expiration or termination of the period of restricted use by the transferee, the Government will not be obligated to pay rent or any other fees or charges during the period of emergency, except that the Government will:

(i) Bear the entire cost of maintenance of such portion of the property used by it exclusively or over which it may have exclusive possession or control;

(ii) Pay the fair share, commensurate with the use of the cost of maintenance of such surplus real property as it may use nonexclusively or over which it may have nonexclusive possession or control;

(iii) Pay a fair rental for the use of improvements or additions to the surplus real property made by the purchaser or lessee without Government aid; and

(iv) Be responsible for any damage to the surplus real property caused by its use, reasonable wear and tear, the common enemy and acts of God excepted. Subsequent to the expiration or termination of the period of restricted use, the obligations of the Government will be as set forth in the preceding sentence and, in addition, the Government shall be obligated to pay a fair rental for all or any portion of the conveyed premises which it uses.

(9) The restrictions set forth in subparagraphs (1) through (7) will extend for thirty (30) years for land with or without improvements; and for facilities being acquired separately from land whether they are for use on-site or off-site, the period of limitations on the use of the structures will be equal to their estimated economic life. The restrictions set forth in subparagraphs (1) through (7) will extend for the entire initial lease period and for any renewal periods for property leased from the Department.

(d) Transferees, by obtaining the consent of the Department, may abrogate the restrictions set forth in paragraph (c) for all or any portion of the property upon payment in cash to the Department of an amount equal to the then current fair market value of the property to be released, multiplied by the public benefit allowance granted at the time of conveyance, divided by the total number of months of the period of restriction set forth in the conveyance document and multiplied by the number of months that remain in the period of restriction as determined by the Department. For purposes of abrogation payment computation, the current fair market value shall not include the value of any improvements placed on the property by the transferee.

(e) Related personal property will be transferred or leased as a part of the realty and in accordance with real property procedures. It will be subject to the same public benefit allowance granted for the real property. Where related personal property is involved in an on-site transfer, the related personal property may be transferred by a bill of sale imposing restrictions for a period

not to exceed five years from the date of transfer, other terms and conditions to be the same as, and made a part of, the real property transaction.

§ 12.10 Compliance with the National Environmental Policy Act of 1969 and other related acts (environmental impact).

(a) The Department will, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus real property for public health purposes, complete an environmental assessment of the proposed transaction in keeping with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No permit to use surplus real property shall allow the permittee to make, or cause to be made, any irreversible change in the condition of said property, and no use permit shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts.

(b) Applicants shall be required to provide such information as the Department deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by the Director of the Office of Federal Property Assistance, as well as other relevant information, will be used by the Department in making said assessment.

(c) If the assessment reveals (1) That the proposed Federal action involves properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places, or (2) that a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action, or (3) that the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, the Department will, except as provided for in paragraph (d) below, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the above cited Acts.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, the Department may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the above cited Acts. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between the Department and another Federal agency, the Department will reserve the right to abrogate its lead agency agreement with the other Federal Agency.

§ 12.11 Special terms and conditions.

(a) Applicants will be required to pay all external administrative costs which will include, but not be limited to, taxes, surveys, appraisals, inventory costs, legal fees, title search, certificate or abstract expenses, decontamination costs, moving costs, closing fees in connection with the transaction and service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(b) In the case of off-site property, applicants will be required to post performance bonds, make performance guarantee deposits, or give such other assurances as may be required by the Department or the holding agency to insure adequate site clearance and to pay service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(c) Whenever negotiations are undertaken for disposal to private nonprofit public health organizations of any surplus real property which cost the Government $1 million or more, the Department will give notice to the Attorney General of the United States of the proposed disposal and the terms and conditions thereof. The applicant shall furnish to the Department such information and documents as the Attorney General may determine to be appropriate or necessary to enable him to give the advice as provided for by section 207 of the Act.

(d) Where an applicant proposes to acquire or lease and use in place improvements located on land which the Government does not own, he shall be required, before the transfer is consummated, to obtain a right to use the land commensurate with the duration of the restrictions applicable to the improvements, or the term of the lease. The applicant will be required to assume, or obtain release of, the Government's obligations respecting the land including but not limited to obligations relating to restoration, waste, and rent. At the option of the Department, the applicant may be required to post a bond to indemnify the Government against such obligations.

(e) The Department may require the inclusion in the transfer or lease document of any other provision deemed desirable or necessary.

(f) Where an eligible applicant for an on-site transfer proposes to construct new, or rehabilitate old, facilities, the financing of which must be accomplished through issuance of revenue bonds having terms inconsistent with the terms and conditions of transfer prescribed in § 12.9 (c), (d), and (e) of this chapter, the Department may, in its discretion, impose such alternate terms and conditions of transfer in lieu thereof as may be appropriate to assure utilization of the property for public health purposes.

§ 12.12 Utilization.

(a) Where property or any portion thereof is not being used for the purposes for which transferred, the transferee will be required at the direction of the Department:

(1) To place the property into immediate use for an approved purpose;

(2) To retransfer such property to such other public health user as the Department may direct;

(3) To sell such property for the benefit and account of the United States;

(4) To return title to such property to the United States or to relinquish any leasehold interest therein;

(5) To abrogate the conditions and restrictions of the transfer, as set forth in § 12.9(d) of this chapter, except that, where property has never been placed in use for the purposes for which transferred, abrogation will not be permitted except under extenuating circumstances; or

(6) To make payments as provided for in § 12.3(c) of this chapter.

(b) Where the transferee or lessee desires to place the property in temporary use for a purpose other than that for which the property was transferred or leased, approval from the Department must be obtained, and will be conditioned upon such terms as the Department may impose.

§ 12.13 Form of conveyance.

(a) Transfers or leases of surplus real property will be on forms approved by the Office of General Counsel of the Department and will include such of the

disposal or lease terms and conditions set forth in this part and such other terms and conditions as the Office of General Counsel may deem appropriate or necessary.

(b) Transfers of on-site property will normally be by quitclaim deed without warranty of title.

§ 12.14 Compliance inspections and reports.

The Department will make or have made such compliance inspections as are necessary and will require of the transferee or lessee such compliance reports and actions as are deemed necessary.

§ 12.15 Reports to Congress.

The Secretary will make such reports of real property disposal activities as are required by section 203 of the Act and such other reports as may be required by law.

Exhibit A.—*Public Benefit Allowance for Transfer of Real Property for Health Purposes* [1]

Classification	Percent allowed											
			Organization allowances					Utilization allowances				
					Unmet needs							
	Basic public benefit allowance	Tax support	Accreditation	Hardship	10 to 25%	26 to 50%	51 to 100%	Integrated Research program	Outpatient Services	Public Services	Training Program	Maximum public Benefit allowance
Hospitals	50	20	20	10	10	20	30	10	10	10	10	100
Clinics	50	20	20	10	10	20	30					100
Nursing Homes	50	20	20	10	10	20	30				10	100
Public Health Administration	[2] 100											[2] 100
Public Refuse Disposal and Wates Systems	[2] 100											[2] 100
Research	[2] 100											[2] 100
Rehabilitation Facility	50	20	20	10	10	20	30	10	10	10	10	100
Special Services	50	20	20	10	10	20	30			10		100

[1] This public benefit allowance applies only to surplus real property being sold for on-site use. When surplus real property is to be moved from the site, a basic public benefit allowance of 100% will be granted.

[2] Applicable when this is the primary use to be made of the property. the public benefit allowance for the overall health program is applicable when such facilities are conveyed as a minor component of other facilities.

[FR Doc. 80-33813 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-12-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1056

[Ex Parte MC 19 (Sub-34)]

Household Goods Transportation (Storage-in-Transit Charges)

AGENCY: Interstate Commerce Commission.

ACTION: Affirmation of final rules.

SUMMARY: By this notice the Commission affirms its jurisdiction to prescribe a rule published at 45 FR 55465, August 20, 1980, requiring that storage-in-transit (SIT) charges for household goods moving in interstate or foreign commerce be assessed in amounts per day or a fraction thereof.

DATE: The rule adopted at 45 FR 55465, 55466 will become effective as scheduled on November 18, 1980.

FOR FURTHER INFORMATION CONTACT: Martin E. Foley, (202) 275-7348.

SUPPLEMENTARY INFORMATION: In our decision of July 17, 1980, (see 45 FR 55465), in this proceeding, we indicated that it was the contention of Household Goods Carriers' Bureau, Inc., (HGCB) that our notice of proposed rule (NPR) in this proceeding (44 FR 30387) and its revision (44 FR 75194) failed to give proper reference to the legal authority under which the rule was proposed. We also indicated that HGCB had submitted that the Commission does not have the legal authority to adopt the rule. HGCB has not provided us with an argument supporting the latter submission.

In our July 17 decision we concluded that it should have been obvious that we were proceeding under 49 U.S.C 10102(23)(B), 10701(a) and 10704(a)(1) in conducting our investigation of the practice of assessing SIT charges in 30-day increments. These sections were not specifically referred to in our NPR or its revision; however, we felt that this failure should not have precluded petitioners from challenging our exercise of jurisdiction. Since the sections had not been previously referred to and out of an abundance of caution we allowed an additional 30-day period for the filing of comments addressed solely to our jurisdiction to prescribe the SIT regulation adopted in this proceeding.

Two comments were filed within the additional comment period which support our position that the Commission does have jurisdiction to prescribe the rule and that adequate notice of the legal authorities under which the rule was proposed was provided. These comments were filed by the Commission's Office of Special Counsel and Miller Brewing Company. No comments were received which argue against our position. Therefore, in the absence of any compelling reason why the adoption of the rule in this proceeding was improper, we conclude that the adopted rule be allowed to become effective as scheduled on November 18, 1980.

Dated: October 17, 1980.

By the Commission: Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking of Marine Mammals Incidental to Commercial Fishing Operations—Permits, etc.

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final decision and final rule.

SUMMARY: This final decision establishes regulations to govern the taking of marine mammals incidental to commercial tuna purse seine fishing in the eastern tropical Pacific Ocean (ETP). The regulations provide for a general permit to be issued allowing the taking of a maximum of 20,500 porpoises, as apportioned into individual species and stock quotas, for each of the five years 1981–1985. The National Marine Fisheries Service (NMFS) will monitor the affected fishery and will take appropriate action to reduce the maximum number of porpoises that may be taken consistent with the economic and technological feasibility of industry compliance with such reductions. The regulations also set requirements for the use of specific equipment and procedures that NOAA believes will continue to reduce the incidental mortality and serious injury of porpoises due to commercial tuna seining in the ETP.

DATES: The decision and revised § 216.24 become effective November 28, 1980. Applications for certificates of inclusion will not be considered until December 8, 1980. The agency anticipates that a general permit will be issued if appropriate on December 1, 1980. A Final Environmental Impact Statement (FEIS) has been filed with the Environmental Protection Agency simultaneously with this decision and can be reviewed by contacting Richard B. Roe at the address below.

ADDRESSES: Administrator, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235. Telephone: 202–634–7287. Office Location: Room 410, Page Building 2, 3300 Whitehaven Street, NW., Washington, D.C.

SUPPLEMENTARY INFORMATION: On February 15, 1980, NOAA published proposed amendments to the regulations governing the incidental taking of marine mammals in the ETP yellowfin tuna fishery (45 FR 10556). The proposal and other relevant available information were reviewed in a formal hearing before Administrative law Judge (ALJ) Hugh J. Dolan held in San Diego, California, from March 31 through April 5, 1980, and in Washington, D.C., on April 14, 15, and 18, and May 19, 1980. The following parties participated in the hearing: The Committee for Humane Legislation and Friends of Animals (CHL); The Marine Mammal Commission (MMC); The Environmental Defense Fund representing the Animal Protection Institute, Animal Welfare Institute, Center for Environmental Education, Defenders of Wildlife, Friends of the Earth, Fund for Animals, Humane Society of the United States, Sierra Club, and The Whale Center (EDF); the United States Tuna Foundation and American Tunaboat Association (ATA); the Assistant Administrator for Fisheries of NOAA; and the Commonwealth of Puerto Rico. The recommended decision of the ALJ was issued on July 18, 1980. A notice of availability was published on July 29, 1980 (45 FR 50375), and exceptions to the recommended decision were filed on August 8, 1980. In accordance with Rule 15 of the procedural rules published on February 15, 1980 (45 FR 10562), I am now publishing the final decision and regulations governing the taking of marine mammals incidental to commercial fishing operations.

Decision of the Administrator

Background

This decision is the latest in a series of decisions concerning the interaction of commercial yellowfin tuna fishing and the incidental take of marine mammals in the ETP. Prior to 1960, the most common method of fishing for yellowfin tuna was use of a pole and line. With the introduction of purse seines in the 1960's came an unwanted catch of dolphins that generally were found in close association with the tuna. Mortalities of dolphins increased significantly from 1960 and prompted the Congress to enact the Marine Mammal Protection Act in 1972 (the Act). 16 U.S.C. 1361 et seq.

The Act was based on a concern that certain species of marine mammals were in danger of depletion [1] and the belief that those animals should not be allowed to diminish below their optimum sustainable population. [2] The Act established a moratorium on the taking and importation of marine mammals (16 U.S.C. 1371), which can be waived by the Secretary only if takings would not be to the disadvantage of those species or population stocks. (16 U.S.C. 1373(a)) This determination must be based on the best scientific evidence available and must be consistent with the purposes and policies of the Act. The Act further requires that the Secretary must publish and make available to the public certain information on the stocks and the impact of takings on the OSP of the stocks on which takings are allowed. (16 U.S.C. 1373(d)) These procedural requirements have been complied with (45 FR 10556) and are republished here for clarity (Table I). If takings are allowed, the Act directs that "[i]n any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate" 16 U.S.C. 1371(a)(2). The authority of the Secretary of Commerce to administer the Act and make these determinations has been delegated to me. (D00 25–5A Section 301 V. June 3, 1977)

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[1] The term "depletion" or "depleted" means any case in which the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under sub-chapter II of this chapter determines that the number of individuals within a species or population stock—

(A) has declined to a significant degree over a period of years;

(B) has otherwise declined and that if such decline continues, or is likely to resume, such species would be subject to the provisions of the Endangered Species Act of 1973; or

(C) is below the optimum carrying capacity for the species or stock within its environment. Section (3)(1).

[2] The Act defines optimum sustainable population as:

. . . with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element. Section (3)(9).

A working definition of this term was published in 50 C.F.R. Section 216.3 (1977) by the National Marine Fisheries Service.

. . . "Optimum sustainable population" is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth losses due to natural mortality.

Table I.—*Impact of quotas for 1981–85 on the Status of Porpoise Stocks*

Species/stock (management unit)	Estimated current population in 1979	Current status of population [1]	Expected status of population at close of 1985 [2]
Spotted dolphin (northern offshore)	3,150,000	0.63	0.72
Spotted dolphin (southern offshore)	638,700	.95	.97
Spotted dolphin (coastal)	193,200	.42	.53
Spinner dolphin (eastern) [3]	418,700	.27	.34
Spinner dolphin (northern whitebelly)	486,600	.78	.83
Spinner dolphin (southern whitebelly)	264,900	.90	.94
Common dolphin (northern tropical) [4]	216,900	.97	.92
Common dolphin (central tropical)	848,400	.89	.92
Common dolphin (southern tropical)	477,100	1.00	.98
Striped dolphin (northern tropical)	50,600	1.00	.97
Striped dolphin (central tropical)	213,300	.99	.99
Striped dolphin (southern tropical)	483,000	1.00	1.00

[1] Proportion of pre-exploited stock size.
[2] Includes assessments for non-U.S. porpoise mortality.
[3] Includes non-target Costa Rican stock.
[4] Includes Baja neritic.

On December 27, 1977, the National Marine Fisheries Service (NMFS) issued a general permit to the American Tunaboat Association (ATA). This general permit is subject to regulations promulgated on December 23, 1977 (42 FR 64548), codified at 50 CFR 216.24. The existing permit and regulations expire at 2400 hours, December 31, 1980, unless amended.

In anticipation of an industry request for a general permit and regulations to be applicable beyond 1980, NMFS announced a scoping-planning meeting and its intent to prepare a draft environmental impact statement on August 9, 1979 (44 FR 46903). At the scoping meeting, the agency also made known its intent to convene a workshop in La Jolla, California, August 27–31, 1979, to consider the current population status of eastern tropical Pacific porpoise stocks. The workshop was intended to be similar to the one held in 1976, the results of which formed the scientific basis for the existing general permit and regulations. The 1979 workshop was expected to form the scientific basis for any general permit and regulations to be proposed for 1981 and beyond.

The 1979 Status of Porpoise Stocks (SOPS) Workshop of scientific experts took place as scheduled. The availability of the report of the workshop (the Report) was announced on November 7, 1979 (44 FR 64480).

The Report contained important new information, some of which suggested that the northern offshore spotted porpoise stock was depleted. Because of its obligation to review new information periodically and modify existing regulations as necessary to carry out the purposes of the Act, NMFS published an Advance Notice of Proposed Rulemaking on November 23, 1979 (44 FR 67194). In the Advance Notice, the agency announced that it intended to hold a formal hearing before an Administrative Law Judge to address the remainder of the 1980 season and the 1981 season. Although the Act does not require a formal hearing to address adjustments for the 1980 season, NMFS determined that this was the best means of reviewing the Report and other relevant information.

On February 15, 1980, proposed regulations were published that included statements required by Section 103(d) of the Act. These proposed regulations would amend the current regulations. Simultaneously a Draft Environmental Impact Statement (DEIS), filed with the Environmental Protection Agency on February 5, 1980, was made available to other Federal agencies and the general public for comment. The February 15, 1980, proposal contemplated the designation of northern offshore spotted porpoise as a depleted stock in addition to eastern spinner porpoises which are currently designated as depleted. In summary the proposed regulations would amend the existing regulatory regime to: (1) authorize the reissuance of a general permit for the remainder of 1980 and 1981; (2) establish a revised allowable take schedule for non-prohibited species only for the remainder of 1980 and 1981; (3) restate the enforcement policy for accidental takings of depleted species/stocks; and, (4) amend gear, fishing procedure, and other requirements.

In accordance with Section 103(d) of the Act and the procedural rules published coincident with the proposal on February 15, 1980, the proposed regulations and all relevant available information were reviewed on the record in a hearing held pursuant to 5 U.S.C. 556 and 557 by an ALJ. The hearing was conducted in San Diego, California, from March 31 through April 5, 1980, and in Washington, D.C. on April 14, 15, and 18, and May 19, 1980.

The hearing focussed on the following issues: (a) estimates of existing levels of the species and population stocks of the marine mammals involved in purse seining yellowfin tuna; (b) the expected impact of the proposed regulations on the optimum sustainable populations of the species or population stocks involved; (c) the economic feasibility of implementing the proposed regulations; (d) the technological feasibility of implementing the proposed regulations; and (e) the impact of implementing the proposed regulations on the tuna stocks.

The ALJ, Hugh J. Dolan, issued his recommended decision on July 18, 1980. The recommended decision addresses all of the issues raised by the parties at the hearing, but does not reach a conclusion as to the status of northern offshore spotted porpoise stock or other stocks in the ETP. Despite the lack of a specific finding regarding depletion of any stock, the findings in the recommended decision strongly suggest a finding of non-depletion for the northern offshore spotted stock with an OSP in the range of 50–70% of the pre-exploitation population. Exceptions to the ALJ's findings were submitted to the Assistant Administrator for Fisheries by EDF, MMC, CHL, and ATA on August 8, 1980.

Summary of the Decision

I find, based on the record of the hearing, the ALJ's recommended decision, the exceptions filed thereto and the Environmental Impact Statement, that the northern offshore spotted porpoise stock is not depleted and that an allowable take of these animals will not be to the disadvantage of the stock or population as a whole. I find that the eastern spinner and the coastal spotted porpoise are depleted and no taking, other than that allowed under the accidental take policy, will be allowed. As to the remainder of the target stocks of porpoise in the ETP, I find that they are not depleted and that allowable takes will not be to the disadvantage of those stocks or populations as a whole. I further find that an annual quota of 20,500 is economically and technologically feasible and should be set for five years (1981 through 1985). I am directing the NMFS to monitor the activities of the tuna industry to determine whether it is technologically feasible to reduce further this quota during the next five years.

The record before me indicates that allowable incidental taking over the next five years will allow growth in

most non-depleted porpoise stocks in the ETP (See Table I). The 20,500 quota is a significant reduction as compared to quotas for the last three years. It is reflective of the industry's continued improvement in release of porpoises and demonstrates the industry's commitment to reduce mortalities. The quota of 20,500 for each of the next five years does not assume that the industry will not reduce mortalities further but rather is based on the record before me which demonstrates that the quotas will not be to the disadvantage of the affected stocks and are currently both technologically and economically feasible.

The record indicates that the northern offshore spotted stock will increase in size even if all of the mortalities in any given year were to be from this stock. Northern offshore spotted is the largest population in the ETP and the maximum replacement yield is over 100,000 animals per year. The maximum replacement yields for other stocks in the ETP for which takings will be allowed are also well in excess of the maximum take allowed for those stocks. There is no evidence which suggests that this growth trend will change. However, in the event that new evidence is discovered or that the continuing refinement of the NMFS resource assessment data suggests that takings may disadvantage any of these stocks, I am prepared to propose further amendments to the regulations, as was done in 1980. To insure that there will be no disadvantage to the stocks I am directing NMFS to continue to monitor and assess the status of all stocks in the ETP and to make a complete assessment of these stocks no later than 1984. If the evidence from that workshop or evidence developed prior to that workshop suggests that the takings of any stock may be to the disadvantage of the animals, NMFS will propose modifications to the regulations further to protect the populations.

In reaching my decision I have only adopted parts of the ALJ's recommended decision. Those parts of the recommended decision adopted are specifically referred to in my decision. Those parts that are not specifically adopted are rejected.

To make the disadvantage determination I have followed the approach used by the 1976 and 1979 workshops which requires an assessment of: (1) present abundance; (2) pre-exploitation stock size; (3) Optimum Sustainable Population (OSP); and (4) projected impact of takings. In summary, I find that the ratio of present population of northern offshore spotted (3.15 million to their pre-exploitation population (5.03 million) is above the lower end of OSP (60%). I find further that an allowable annual take of 20,500 animals in the aggregate will not disadvantage the stocks and is technologically and economically feasible. The application of my findings to other stocks under consideration, results in the eastern spinner and coastal spotted stocks being depleted, and the other ten not being depleted. Each of these parameters and the evidence supporting my conclusions are discussed below.

Detailed Findings

A. *Present Abundance.* There is no dispute that it is proper to calculate the present abundance of each porpoise stock by a computer model that combines the following factors:

(1) the mean size of porpoise schools;

(2) the density of porpoise schools in the inhabited area;

(3) area inhabited by stocks in the ETP;

(4) the proportion of schools that are "target" schools (i.e., spinner or spotted porpoise); and

(5) the proportion of target species within target schools.

All of the factors of the formula to compute present abundance were at issue in the hearing.

The Basic Data

The critical evidence for all of these factors is the data used to make the estimates. The four data sources in the record are—observers, tuna vessel records, aerial surveys, and research vessel surveys.

The observer data are recorded by Federal observers on tuna vessels. Those data are recorded on observer logs, which are sent to the Southwest Fisheries Center (F/SWC) for analysis.

Tuna vessel data are recorded by vessel employees who are required by the existing regulations (50 CFR 216.24(d)(3)(v)) to record the number, location and the size of the schools they encounter. These data are recorded on fishing logs which are forwarded to F/SWC for analysis.

Aerial survey data are collected by NMFS spotters from fixed wing aircraft. Aerial surveys were conducted in 1977 and 1979. Three spotters in each airplane collectively observed all porpoise schools and the size of the schools they encountered on a predetermined flight track. Due to the planes' limited range, only the eastern ETP was surveyed.

The research vessel surveys were conducted by the NOAA vessels *Cromwell* and the *Jordan* in 1977, 1979 and 1980. Porpoise school observations are collected from the bridge of the research vessels and like the aerial survey record, the data reflect the number and size of the schools encountered on a predetermined track line.

All these data are important as indicators of the present population size of the porpoise stocks in the ETP. Their use and the weight to be given to each data set were the subject of considerable controversy at the hearing. Each data set will be discussed in connection with the different elements that comprise the formula to estimate present abundance.

1. *Mean School Size.* The average school size in the population area may be determined by using any or all of the four data sources just described. The mean school size derived from each of these sources varies greatly. As the present population estimate and the pre-exploitation size depend to a great extent on mean school size estimates, their accurate calculation is crucial in determining disadvantage.

Each of the data sets that can be used to estimate mean school size has some bias. However, it is my judgment that the NMFS aerial survey data represents the best available scientific estimate of mean school size. This results in a mean school size of 201 animals. The basis for this judgment is set forth in the following paragraphs.

(a) *Observer Data.* There is record evidence that the observer data are biased, but there is no record evidence to establish how to correct for the bias in that data. Evidence indicates that tuna vessels selectively search for larger porpoise schools and, although observers record the schools accurately, they do not have the opportunity to see as many smaller schools, thereby biasing mean school size estimates upwards. (NOAA 29)[3] The 1979 workshop concluded that observer data were not statistically valid because they result in mean school size estimates that are 2 to 4 times higher than the mean school size derived from the aerial and vessel survey data (419–857); and therefore should not be used to compute mean school size. (NOAA 52) I have concluded on the basis of the record that the 1979 workshop was correct in excluding the observer data in view of its inability to correct for the bias in it.

[3] Citations in this decision are to exhibits introduced at the hearing. Citations to the transcript are made by the location of the hearing (San Diego or Washington) and the page number. Citations to the recommended decision are by findings or page number. Citations to the briefs of the parties are by name of the party and reference to the opening or reply brief.

While I have considered the arguments of the industry, accepted by the ALJ, that the data should be used, I cannot, on the basis of the record before me, quantify the bias, nor can I conclude that giving the average of observer data equal weight with the averages of the data from the aerial and vessel surveys is scientifically supportable.

(b) *Tuna Vessel Employees.* In addition to those biases noted for the observer data, there is substantial evidence that the tuna vessel employees do not record accurately the number of porpoises in the schools that they see. (NOAA 29) In addition, there is evidence suggesting that tuna vessel employees often do not count smaller schools at all. (NOAA 29) The effect of this is to introduce a bias into the data identical to that described in the preceding section on observer data. These data were also rejected by the workshop and in fact were not supported as useable data for school size estimates by any party to the proceeding. I find that these data are not the best scientific information available and therefore should not be used.

(c) *Research Vessel Data.* There were a total of four research vessel surveys which produced school size estimates in the record. In 1977, two cruises by the *Cromwell* and *Jordan* produced estimates of 137 and 186 respectively. The *Cromwell* cruise spent some time in the southern extreme of the ETP which is an area of lower density for porpoises. The *Cromwell* and *Jordan* data for 1979 were collected in the so-called inshore area (the area covered by the aerial survey) and the outside area. The cruises resulted in estimates of mean school size of 115 for the *Jordan* and 151 for the *Cromwell.* Two biases for these data are suggested by the record. The first is that the two vessels have bridges at different heights from the water and therefore the data may not be compatible. I find that there is substantial evidence in the record to show that this bias was accounted for. (SD 446–7, EDF/RB 5–6, NOAA/OB 25, NOAA 29: 37) The second is that the research vessels are slower than the tuna vessels and porpoise, particularly ones that have already been captured, may avoid any vessel. There is no evidence in the record to quantify this bias. These data were not used by the workshop for estimating mean school size, although they reinforce the accuracy of the aerial survey data. The workshop excluded the use of these data because they were not as reliable as the aerial survey data. I find that their exclusion, because of the uncertainty resulting from the speed of the research vessels, is supported by the record and that they are not the best available scientific evidence to estimate school size.

(d) *Aerial Surveys.* As indicated above, I have concluded that these data, which result in an estimate of 201, are the best data to derive mean school size. These data could be biased by adverse weather conditions causing lower estimates, and the inability of the aerial spotters to count submerged porpoises. There is evidence in the record on each of these potential biases.

The 1979 aerial survey was conducted by flying a plane on a predetermined trackline. If a school was seen off the trackline the plane would fly over the school and count the number of animals. Photographs were taken of some of the schools in order to validate aerial observers' ability to count accurately. Photos were taken in a time sequence so that all of the animals would be out of the water in one or more photos. This evidence demonstrates that the aerial observers can accurately count what they and the camera see independently. A second study (the so-called *Gina Anne* cruise in 1980) was conducted to determine if the camera recorded all of the porpoises in the school. (NOAA 76) After taking photos of the school from a helicopter and making visual estimates of school size, the school was set on and captured by the *Gina Anne.* The porpoises were released from the net during an extended backdown procedure and counted. This study demonstrates a high correlation between the photographic evidence and the actual number of porpoises in the school. It is my conclusion that the 1979 aerial survey data has a high degree of accuracy, and is the best available scientific evidence to determine mean school size.

2. *Density of Schools.* Density is the average number of schools found in a grid of 1,000 square nautical miles (nm^2). It is used as a multiplier of mean school size and is of equal importance with it. Even small errors in density can have a significant impact on present population size.

The 1979 workshop divided the ETP into an "inside" and an "outside" area, finding the former to have a density of 12.02 schools/1,000nm^2 and the latter a density of 6.26 schools/1,000nm^2. These densities were derived by calibrating the results of the 1979 aerial survey on the inside area to the results of research vessel surveys of both areas by the vessels *Jordan* and *Cromwell.* (NOAA 60: 13–15; NOAA 52: 17–19; NOAA/OB 11–25; EDF/OB 4–33; EDF/RB 3–8; EDF/EX 3–9) I conclude that the density estimate of the inside area in the 1979 workshop (12.02) is the best scientific evidence in the record. For the outside area, further refinement of an analysis introduced at the hearing results in the outside density estimate of 7.97. This is consistent with the ALJ's finding that the outside density was "underestimated" by NMFS. (Finding 116) As the arguments for the inside and outside densities differ, the remainder of this section will treat each separately.

(a) *Inside.* The inside area is determined by the range of an airplane capable of flying at slow speeds. It has no biological or ecological significance. The basic assumption of the aerial survey is that all large porpoise schools (those of more than 15 porpoises) on the airplane trackline are seen. (NOAA 60: 314, NOAA 29: 57–60, SD 366, 369) This assumption was the focus of most of the testimony on density.

The agency presented scientific opinion to show the correctness of its assumptions that schools do not move in response to the aircraft prior to being spotted and that the aerial sightings are independent events and are not biased by prior sightings. In addition, the agency submitted evidence to show that no biases could be demonstrated that were due to weather (sea state) or sunglare and that sighting conditions were similar in all statistical areas. (NOAA 52: 18–19, NOAA 29: 9–11) Factual and opinion evidence was submitted by Lt. Cmdr. Wayne Perryman to show that all large schools directly on the trackline were spotted. (SD 766–821) To counter this evidence, Gordon Broadhead, the industry expert and a former PBY pilot, argued that schools were missed on the trackline and that this did have a biasing effect and that the inside density should be raised from 12.02 to 23.4 schools/1,000 nm^2. (SD 921–922, ATA 39: 7, 15–16, SD 766–821)

NMFS's witness, Dr. Tim Smith, examined sea states by dividing the inside area into two areas, a "coastal band" and "offshore band." He noted that Beaufort 2, 3, and 4 conditions were more or less evenly distributed within the coastal band. This testimony shows that estimates of density for Beaufort 2, 3, and 4 sea states are approximately equal and, therefore, sea state does not have an effect. I conclude that Dr. Smith's analysis of weather effect is uncontroverted and is the best evidence in the record. (See also NOAA/OB 18–20; EDF/OB 5–15).

With respect to sun position, Dr. Smith analyzed densities for the four sun positions recorded by the observers in the 1979 aerial survey. The estimated densities by sun position do not show a consistent trend as might have been

expected if sun position had an effect. The ALJ found that sun glare does not have an effect. (Finding 15) His finding is supported by the record.

Finally, it is my judgment that the suggested bias for aerial observer differences is not substantial and that the proferred correction for it will not significantly affect the data.

(b) *Outside.* The outside density was computed by the 1979 workshop using the *Cromwell, Jordan* and the aerial survey data. NMFS showed that the vessel data which were collected in the inside and outside areas indicated a density gradient of approximately 2 to 1, inside to outside. It then applied this gradient to the aerial survey estimate of the inside density to arrive at the outside density.

The industry countered this approach by arguing that a gradient based on a ratio of outside and inside research vessel data tended to bias the outside density downward. The industry argued that the 1979 *Cromwell* cruise spent too much time in areas of known low density around the Equator. It suggested on brief that these data should be excluded as biased, and as a result, the outside density should be increased to 10.60. (ATA/OB 40–45) Its testimony on this point attempted to correct the *Cromwell* data mathematically, resulting in a density of 9.48. (ATA/OB 48)

When Dr. Tim Smith's analysis of "offshore" and "coastal bands" is applied to the inshore/offshore gradient, it changes the 1979 workshop estimate of an approximately 2 to 1 density ratio (inside to outside) to 3 to 2. Both the methodology and the data on which to apply it are in the record, although the actual analysis on research vessel data is not. This methodology represents a significant refinement to the outside density determination and results in an increase in the outside density to 7.97.

Two potential biases remain to be addressed. The ALJ found that a bias resulted in the research vessel surveys because the two vessels were not identical. I find that the evidence in the record indicates that the calibration exercise accounted for this potential bias by keeping data from the two boats separate. As to the remaining potential bias, I find that the industry's argument that in 1979 the *Cromwell* spent too much time along the Equator, which is a low porpoise density area, does not have merit. In order to determine density, the research survey had to take a representative sample of the entire area inhabited.

3. *Area Inhabited.* In the population estimation model that all parties used, the estimate of the total number of porpoise is obtained by multiplying density times the mean school size times the total area inhabited by the stocks. I have concluded that an area of 3.6 million nm^2 is the best available scientific estimate of the area inhabited by all stocks.

In the 1976 workshop, this area was taken to be the known historical range inhabited by each stock and was estimated from plots of locations where schools had been sighted from a variety of platforms. (NOAA 1) The 1979 workshop took the same basic approach, using accumulated sightings from research vessels to eliminate regions where porpoise were suspected but where none was revealed in the survey. (NOAA 60:18) Tuna vessel data from 1977 to 1979 were not used because they had not been analyzed and edited prior to the 1979 workshop. (SD 272–274)

The industry made two arguments: (1) the area of each stock was larger within the ETP and (2) the overall range was larger than recognized by the workshop. The industry introduced evidence of porpoise sightings by research vessels beyond the range used by the 1979 workshop. (ATA 41) the agency countered this argument with the explanation that the gradient theory suggested that if the ETP were further stratified the density of porpoises in the far western range would decrease and hence the impact of these far western sightings would be insignificant.

The industry also argued that the stock ranges within the total range were greater than those used by the 1979 workshop. It argued that the 1977, 1978, and 1979 observer data showed greater ranges of individual stocks. (ATA/OB 22) The agency admitted that these data had not been used by the workshop (NOAA/85:4a), but introduced an analysis of those data at the hearing (NOAA 71, 72 and 73) and argued that the data did not support extended stock ranges.

It is my judgment that the basic assumption that density increases nearshore and decreases offshore is supported by the evidence. As there is an inverse relationship between the western extension of the area inhabited and the number of porpoise schools sighted, far western sightings would only decrease the outside density if they were properly computed. Therefore, the net effect would be an insignificant increase in population size.

4. *Proportions of Stocks.* The three elements just discussed will only provide the number of porpoises in the aggregate. In order to determine the proportion of the aggregate that are attributable to each stock the 1979 workshop employed a two step process: (a) calculation of the proportion of all schools that are target schools (i.e, those that are fished on); (b) apportionment of target shools into component target stocks.

(a) *Proportion of all Schools that are Target Schools.* I conclude that the 1979 workshop approach to the proportion of all schools that are target schools is the best available scientific evidence. The 1979 workshop utilized data from the aerial and the research vessel surveys to determine the proportions of all schools which were target schools. (NOAA 29:48) The industry challenged NMFS' failure to use the observer data in determining the proportions of all schools which were target schools. (SD 929) The agency introuced evidence indicating that this calculation depends on an assumption that vessels from which the data are collected search for all species in a random manner. (SD 460–461) Tuna vessel observer data were not used because NMFS belived that the tuna vessels selectively search for target schools and ignored non-target schools. (NOAA 29, pp. 72–73; SD 460–461) I find this approach is proper.

(b) *Apportionment of Target Schools.* I conclude that the 1979 workshop approach to apportioning stocks within target schools is the best available scientific evidence. To determine the specific stocks in target schools, the 1979 workshop relied on the research vessel data in 1977 and 1979 and the tuna vessel observer data from 1977 to 1979. (NOAA 29) Aerial survey data were not used for the more detailed proportions because of difficulties in identification from the air. (Id.)

The industry did not counter the use of observer data to determine specific stocks and populations in target schools. EDF did not submit evidence but argued that if the observer data biases were correct, the use of such data in determining apportionment of stocks within target schools overestimates the current population of northern offshore spotted porpoise stock. (EDF/OB 43) EDF pointed to the 1979 workshop alternative approach to consider species proportions in target schools and the Inter-American Tropical Tuna Commission (IATTC) calculation of the same parameter, arguing that they are similar and are the best scientific evidence in the record. Despite EDF's contention that two calculation are better than one, the 1979 workshop chose to use observer data in combination with the research vessel data in making its calculation. It did this fully apprised of the deficiencies in the observer data. I have concluded that there is no strong evidence contrary to the workshop's scientific judgment and

that it is the best scientific evidence available.

5. *Summary of Present Abundance.* The findings in the preceding section result in a present population for northern offshore spotted porpoise of approximately 3.15 million animals. Though this is somewhat higher than the 1979 workshop estimate of 2.7 million, the findings above are generally consistent with the workshop conclusions, with the exception of the outside density. There are a number of uncertainties in predicting accurately the present abundance of the porpoise populations in the ETP. The model used and the data applied have, for the most part, resolved those uncertainties in favor of the porpoise populations. This inherent conservatism is important in order to ensure that takings will not be to the disadvantage of the stocks as a whole.

B. *Pre-exploitation Abundance.* Once present abundance for each stock is estimated, there must be a "back calculation" in order to determine the abundance of each stock in the first year the stock was exploited to a significant extent. 1959 is the year that the industry began using purse seines on a large scale, and most of the porpoise stocks are assumed to have been at their maximum size (by number and area) in that year. Back calculation involves a theoretical addition to present abundance of all porpoises incidentally killed since 1959 and a subtraction of the number of net recruits added to the stock in the interim years. The addition of historically killed porpoise involved three areas of controversy: number of sets in the early years of the fishery; kill per set; and, the species composition of the porpoises incidentally killed. The subtraction is determined solely by reference to an estimated maximum net reproductive rate for ETP porpoises, known as "Rmax".

1. *Additions.* a. *Number of Sets.* An estimate of the number of sets by the the tuna fleet between 1959 and 1979 is used to establish the total number of fishing mortalities to be added to the present population. This is derived using historical records from IATTC Logbooks.

For the 1971 season and beyond, the 1979 workshop used data that NMFS had collected. These data are for the most part uncontested. The data for 1959–70 from the Inter-American Tropical Tuna Commission show 3 types of sets—on porpoise, not on porpoise, and unknown. (NOAA 27 and NOAA 52) The workshop used a proportion of the number of sets from 1959 to 1970 that were either on porpoise or not on porpoise. It then applied this proportion to the unknown sets. The industry introduced evidence from Dr. Allen of the IATTC to show that this assumption was incorrect and that by using IATTC data, a more accurate estimate of the unknown sets could be made. (ATA 42)

The industry argued that NMFS overestimated the number of sets in the early years by 6500. It based this argument on evidence submitted by Dr. Allen. These data were not available to NMFS prior to the hearing. (ATA 2) In an attempt to resolve the matter, Drs. Smith and Allen and Mr. Alverson convened a scientific working session after the hearing. Their report to the ALJ was inconclusive and reiterated the original positions of the parties. (Letter to Dolan May 16, 1980; See also NOAA 85:7–8; NOAA/0B 37–39; ATA/0B 51–53; EDF/0B 53–58; MMC/0B 21–23)

On the state of the record, Dr. Allen's analysis is a better analysis of the early sets than the methodology applied by the workshop. This analysis is based on historical data not previously available and reflects with greater accuracy than the NMFS estimate the actual fishing effort in the 1960's. From this analysis, I have concluded that the workshop overestimated the additions to the stock by 6500 sets. These data should be further refined in the future but the analysis as it was introduced in the record is superior to the arbitrary apportionment applied by the workshop. In addition, it is based on data, which before the hearing had not been made available to NMFS to assist in its estimation of historic kills. I conclude that it is the best available scientific information.

b. *Number of porpoises killed in each set.* In order to estimate the total number of additions, it is also necessary to determine the number of porpoises killed in each set. Like the estimate of number of sets, good data exist for the 1971–79 period. However, little or no data exist for the 1959–70 period. Three factors are important—the data used to derive the estimate of kill per set; when and to what extent backdown was introduced in the fleet; and the treatment of serious injuries, unobserved injuries and cryptic kill.

i. *Data.* The 1979 workshop used data points from 1972, 1971, 1968, 1966 and 1964 to estimate the kill per set of sets for two vessel sizes, for successful and unsuccessful sets, and for sets with and without backdown. Because the workshop had substantially more data from 1971 and 1972 than from the other years and treated all the data equally, the data are skewed toward the 1971 and 1972 data. During the course of the hearing differences in those data were resolved and presented in a document proposed jointly by NMFS and the industry. (NOAA 87) Therefore, I have concluded that the best available scientific evidence is the kill per set figure in this exhibit.

ii. *Introduction of Backdown.* Since the kill per set estimates have a higher number of mortalities for sets without backdown than with, it is important to assess which sets used backdown and which did not.

The workshop concluded that the fleet used the backdown technique on 80% of the sets in 1964 and that the 80% was achieved linearly over these six fishing years from 1959. (NOAA 27) This conclusion differs from the 1976 workshop which concluded 100% in 3 years. This change was a result of the discovery of one letter (the Lopes letter, ATA 14), which establishes 80% use of backdown by one vessel on 110 sets in 1964. The industry did not present evidence to conclude otherwise but argued that the 1976 workshop was a more reasonable approach.

The 1976 workshop assumed 100% in three years based on interviews with people familiar with the fleet. (NOAA 27: 4–5) The industry presented evidence (Alverson SD 569 Lines 15–23) that the fleet did adopt the backdown procedure between 1959–62 and that the calculation should be amended to take this into consideration.

The issue here requires a factual determination. The competing views are the opinion of the industry's expert, Mr. Alverson, that there was an exponential rather than linear introduction of backdown reaching the 80% mark in 1964, versus the written and oral testimony of an agency scientist that a straight line drawn between two data points, zero in 1959 and 80% in 1964, is reasonable. Neither Mr. Alverson nor the agency witness on this point had any extensive experience on tuna vessels during the period, and the industry did not put a skipper on the stand to argue that there was a rapid introduction of backdown over the period 1959–1964. The existence of the Lopes letter is meager evidence on which to base the agency's assumption. Lopes saw only 110 sets on one vessel. He did not appear at the hearing, but there is no evidence in the record challenging the authenticity of the letter.

The evidence in the record suggests that the industry did go to 80% earlier than the linear approach used by the workshop. Therefore I have concluded that the industry employed backdown in 80% of all sets by 1962 and introduced backdown linearly from 1959 to 1962. Thereafter, it used backdown 80% of the time for 1962, 1963 and 1964.

iii. *Serious Injury.* In calculating kill, the basic assumption is that some or all of the injured animals die, resulting in an increase in overall mortality. This parameter is of minor significance to the formula, but can be used to accommodate for cryptic kill (i.e., unobserved mortalities resulting from the stress from chase and capture not occurring until after the animals are released from the net).

NMFS argued that the proper assumption was to include as mortalities all seriously injured animals, as this took into account cryptic kills and unobserved injuries. The industry argued that the assumption was incorrect and offered an alternative calculation to show how serious injuries could be taken into account. (ATA 37)

The ALJ found that it was reasonable to assume that not all animals seriously injured died, but was unable to apportion serious injuries as mortalities or survivals. (Finding 65) He went on to find that there was no evidence to quantify cryptic kill. (Finding 66) He concluded that the workshop approach of considering all serious injuries as mortalities was correct, because this took into account cryptic kill and unobserved injury. I adopt the conclusions of the ALJ on this point.

(c) *Apportioning Historic Kill.* Once there is a determination of how many animals were killed, it is still necessary to apportion the kill by species. The 1979 workshop used a species proportion based on the 1971 and 1972 kill figures and applied that proportion to the number of kills in the 1959–70 period. The industry argued that data from 1959–70 should be used to make the apportionment.

The industry submitted an analysis covering the period 1959–70 based on Dr. Allen's data in which there were 6,500 fewer sets on porpoise. (ATA 42, Appendix 4) The industry's witness testified that the fleet had expanded its geographical range to the west from near shore areas throughout the 60's. (ATA 42) It then went on to argue that the species mix inshore and offshore varies and would result in different mortality figures for given stocks depending on the area fished. There was no cross examination of the industry's witness on this point.

The NMFS approach to apportionment is not consistent with the westward progression of the fleet. It assumes that the stocks fished on in 1970 and 1971 were the same as for the prior 10 years. This would be true if the early fishery (1959–69) was in the same area as the 1970 and 1971 fishing areas or if the stocks were evenly distributed in all areas. Neither assumption is consistent with the evidence.

ATA 42 provides an analysis of the western movement of the fleet and the gradually increasing involvement of the northern offshore spotted stock in the fishery. From the charts presented I have concluded that the fleet could not have taken this stock in the numbers derived from the 1970–71 ratio. ATA 42 also provides an alternative estimate of this impact. (ATA 42:83) These data admittedly are not as precise as they could be given further refinements in the calculation, but they are substantially bettter evidence than that used in the 1979 workshop report and are the best available scientific evidence. ATA 42 indicates that 1,348,814 fewer northern offshore spotted porpoises were killed than the 1979 workshop indicates. This is a result of the 6500 set overestimation discussed above and a comparison of the fleet's activity in the early years in relation to the nearshore range of the northern offshore spotted porpoise. The workshop in making its analysis of the spotted data concluded that all spotted were northern offshore spotted porpoise. ATA 42 concludes that the majority were coastal spotted because the fishing effort was in their range and not the range of the northern offshore spotted. The effect of this is that 670,000 coastal spotteds were caught in the early years of the fishery.

These data can only be used for the apportionment of kills of northern offshore and coastal spotted porpoise. Since this information provides a specific number of coastal and northern offshore spotted porpoise killed, it is unnecessary to make findings for those stocks on number of sets and on kills per set. Number of sets and kills per set are only necessary for those stocks that do not have specific evidence. There is no other evidence in the record regarding historical apportionment of kills for the other stocks in the ETP. Therefore the apportionment used by the 1979 workshop is the best evidence in the record to apportion stocks other than coastal and northern offshore spotted.

2. *Subtractions.* Once the number of historic kills is determined, it is necessary to estimate the number of animals added to the population annually. This is computed by determining the maximum rate of reproduction for the stock. This number is subtracted from historic kills to arrive at the overall number to be added to the present population.

(a) *Rmax.* Rmax is the maximum rate of net reproduction by ETP porpoises on an annual basis. Rmax is derived by subtracting natural mortality from the gross annual reproductive rate. As noted above, this figure is used in the back calculation to determine pre-exploitation stock size. In the event a stock is not depleted, Rmax is also used to determine the replacement yield from which the applicable quota is determined. (NOAA 56)

The 1979 workshop determined that every Rmax in the 0–4% range was equally likely. This conclusion is based on the workshop's rejection of the 1976 workshop comparison to dolphin stocks near Japan and adoption of the view that no cetaceans have a known Rmax in excess of 4%. (NOAA 52) The industry pointed out several deficiencies in the data used in the 1979 workshop, specifically the statement with respect to no record of cetacean Rmax's above 4%. (ATA 38)

The industry argued that there was no evidence to suggest a change from the range of 2–6% adopted by the 1976 workshop and that the appropriate level could be as high as 6–10%. (ATA 38) The industry's witness pointed to several data sources to support his conclusion that Rmax's for other cetaceans were higher than the workshop estimate. NMFS countered this by presenting and analyzing life history data for marine mammals. (NOAA 52: 37–43) Other submissions pointed out difficulties in the way industry had relied on data showing higher Rmax estimates for other cetaceans. (MMC/OB)

The ALJ found that the Rmax was 4% and based his finding on the 1976 workshop report (NOAA 1) which concluded that Rmax could be from 2–6%. (Findings 137–143)

The 1979 workshop based its estimate on comparisons to known data for terrestrial mammals and some data for large whales. The lower end of the range, 0%–2%, reflects a concern over the effects of cryptic kill. The workshop took this into account in the serious injury mortality figures and its addition here would be overly conservative. The remaining portion of the range, 2–4%, is a more accurate estimate. The workshop concluded that scientifically any Rmax from 0–4% is equally likely. The ALJ's judgment was that 4% was the correct point estimate because he saw no reason to deviate from the 2–6% in the 1976 workshop. Which level of Rmax is appropriate requires an assessment of the expert opinions of the witnesses at the hearing. I conclude that the ALJ's assessment of the evidence is correct in that the evidence does not convince me that an Rmax of 2% has greater support than the midpoint of the range (4%) used in my 1977 decision. (Findings 136–143) Therefore, I find that an Rmax of 4%, as supported by the scientific conclusion of

the workshop, is the best available scientific point estimate.

3. *Summary of pre-exploitation stock size.* A computation of the findings above results in a pre-exploitation stock size for northern offshore spotted porpoise of approximately 5.03 million animals.

C. *OSP.* Optimum Sustainable Population is the standard by which a determination of disadvantage to a porpoise stock is made. The standard has been expressed as a range, which is a measure of the health of the various porpoise stocks relative to their environment. (NOAA 52 and NOAA 56)

When a population is below OSP, it is depleted. The upper end of the range of OSP is a stock size in relation to the original unexploited stock, that is, the maximum number of animals that the ecosystem can support. This is expressed by a percentage of original stock size.

The significant issue at the 1980 hearing involved determining the lower end of OSP. The lower end has been expressed as a range, so that the focus is on a range within a range. The lower end is determined theoretically by estimating what size stock in relation to the original stock size will produce the maximum net increase in population. Every population of animals has a size at which it will increase at a maximum rate. That level, known as the Maximum Net Productivity Level (MNPL), is the lower end of OSP. MNPL is expressed as a range to reflect uncertainties in the data. However, in 1977, the midpoint (60%) of this range (50–70%) was used to determine if the stock was depleted (42 F.R. 64548, Dec. 27, 1977).

At this year's hearing NMFS argued that a range of 65–80% was appropriate based on the 1979 workshop report. The report compares porpoises to other mammals and abandons the 1976 workshop approach of the linear relationship between stock growth and reproductive rates. This more conservative approach is based on the observation that large mammals are longer lived and reproduce later in life and, therefore, require a larger population to achieve MNPL, than smaller animals such as rodents.

The industry argued that the 1976 workshop's theoretical approach to MNPL was correct, and that no new evidence was available to suggest 65–80%, other than the shift in the approach of the workshop. In its cross-examination of the agency's lead witness, the industry pointed out that an MNPL of 60% is used by the International Whaling Commission. (SD 225–6)

The ALJ found that the lower bound of OSP was between 50–70% of original stock size. He found that the 50–70% range was already conservative and that a change to 65–80% range based on a change in population dynamics theory, rather than new data, was unwarranted. (Findings 144–50)

The empirical data for calculating OSP are admittedly scant. The agency put forward a new theoretical approach to OSP (NOAA 15) which results in a more conservative estimate of MNPL. The workshop found that biologically any number between 65–80% was equally likely. The industry testimony (ATA 36) shows that the MNPL levels for seven mammals with a low of 56 (for deer) and a high of 86 (for elephants). The industry's witness, Mr. Fredin, described these as "the best available evidence" on MNPL for seven populations of large mammals. (TR 188) By averaging these data using each point estimate, Mr. Fredin arrived at MNPL of 66.5.

The record reflects that there is dispute as to which concept should be used to find MNPL for porpoises, and that, under either concept, there is a scarcity of data to provide certainty for any MNPL calculation. I have concluded that the theoretical approach used by the 1979 workshop, that is, that there is a curvilinear density dependent relationship, is the best available scientific approach despite its narrow exposure in the scientific community. It seems more than plausible that porpoises, like other large mammals, are relatively long-lived and reproduce late in life.

Despite my agreement with the workshop's theoretical approach, I cannot conclude that the range used by the workshop (65–80%) is the best. There is no direct evidence that porpoise populations fit the theoretical model. Further, while the 1979 workshop concluded that MNPL is ". . . significantly higher than 50%. . . ." (NOAA 52:7), this does not ineluctably lead to a choice of a range of 65–80. The International Whaling Commission uses an MNPL of 60 for populations of longer lived and larger animals than those in question here. Although some persons before the IWC have questioned that level, as the level is being questioned here, the IWC, which includes experts from the world over, has not changed the MNPL for larger marine mammals. In addition, the ALJ was not persuaded by the selection of the range of 65–80. Like the ALJ, I do not believe that a departure from the prior point estimate of MNPL is warranted from the population comparisons used by the workshop. Therefore, I conclude that the best scientific evidence in the record is that 60 is the point where the lower range of OSP should be set.

D. *Impacts of Takings.* There are two issues that must be resolved in the event a species is not depleted. The first is to determine the level of take that will satisfy the Act's immediate goal objective. It is satisfied by establishing quotas that are economically and technologically feasible and that will not be to the disadvantage of the stocks. I have concluded that an aggregate take of 20,500 animals is technologically and economically feasible and will not be to the disadvantage of stocks from which takings are allowed. In this regard I have taken into account the lengthy discussion of the industry and its activities in both the DEIS and the FEIS. In particular, I incorporate by reference in this decision the discussion of the industry at pages 39–43 of the FEIS. The aggregate quota is apportioned as set out in Table II. The second issue is to determine the length of the regulatory regime and permit. I have concluded that the regulations should be in place indefinitely and that a five year permit can be issued.

1. *Quotas.* In the event of a determination of non depletion, the Act reuires a finding that the stocks will not be disadvantaged by allowing any takings. This determination is made by estimating the maximum replacement yield of each stock. (Rmax times present stock size). The replacement yield for each stock is then divided between anticipated foreign and domestic takes.

Once this aggregate number is established, there can be an apportionment of the total quota to obtain allowable takes for each stock. After apportionment it can be determined what take is economically and technologically feasible in order to meet the MMPA's immediate goal test. The application of this test results in the actual quotas.

The kill of porpoises per ton of tuna caught has been used in the past as an indicator of economic and technological feasibility. The DEIS used the period of 1977–79 as representative of the expected tuna catch for future projections. (NOAA 56) The industry argued that the period from 1970–79 was more appropriate. (ATA 43) The average catch in the 1977–79 period was 69,000 tons of tuna, while the average for the 1970–79 period was 98,000 tons of tuna. I have concluded that fishing during the 1970–79 period does not reflect fishing patterns projected for the next five years. There was no regulation of the incidental take of marine mammals for a significant portion of the period. In addition, the ban to be adopted on sundown sets and the previous ban on the take of eastern spinners alter the fishing pattern over this period.

Table II.—*Quotas for Each Calendar Year 1981–85*

Species/stock (management unit)	Maximum replacement yield [1]	U.S. allowable mortality [1]	Encirclement	Take
Spotted dolphin (northern offshore)	85,335	11,890	5,993,000	9,606,000
Spotted dolphin (southern offshore)	11,395	410	206,000	331,000
Spinner dolphin (northern whitebelly)	10,643	3,075	403,000	695,000
Spinner dolphin (southern whitebelly)	4,970	205	27,000	46,000
Common dolphin (northern tropical) [2]	3,781	1,230	293,000	471,000
Common dolphin (central tropical)	16,225	2,870	298,000	927,000
Common dolphin (southern tropical)	8,091	615	64,000	198,000
Striped dolphin (northern tropical)	858	62	3,000	4,000
Striped dolphin (central tropical)	3,644	103	5,000	7,000
Striped dolphin (southern tropical)	8,190	40	2,000	3,000
Total		20,500		

[1] The U.S. allowable mortality in any of the years 1981–85 shall next exceed 20,500.
[2] Includes Baja neritic dolphin stock.

I am cognizant of the concern that the quota should accommodate for a good fishing year. Therefore, I find that the highest annual catch (93,000) during the 1977–79 period is the best indicator of the projected catch of tuna. In addition, I find that the 1977–79 period is the best period from which to apportion the modified replacement yield to arrive at individual stock quotas. This figure multiplied by a kill/ton rate of .24 results in a quota of 22,320. This quota is further modified by 8.5% to reflect the lost catch due to my adoption of the ban on sundown sets. This results in a quota of 20,500.

2. *Length of the Regulatory Regime and Permit.* The disadvantage test is a continuing obligation of the agency. It requires that the agency must assure itself that takings over the period of the permit will not disadvantage the stocks. Historically, the length of the regulatory regime has coincided with the length of the permit, but this is not required by the Act.

At the hearing, NMFS argued that northern offshore spotted porpoise were depleted and therefore did not address the length of the regulatory regime or permit if they were not depleted. The industry asked for a five year permit. On brief, it argued for a multi year permit because of the costs to the agency and the industry in preparing for the hearing. (ATA OB 105–6)

The length of the regime and permit requires a policy, as well as a scientific judgment. I am concerned that the effort to compile a record in proceedings like this one, places a significant burden on the agency and the parties. However, this burden must be subservient to the Act's requirement that the health of animals be considered prior to the effects of the regulations on the industry. So long as there is an assurance that the populations will not be disadvantaged by the proposed takings, there is no need to adjust the taking regulations except for modifications to the existing quotas to achieve the Act's immediate goal objective. If the stocks are not now depleted (with the exception of the eastern spinner and coastal spotted stocks), the record reflects that most of the stocks should grow. Therefore, I have made a determination that the level of takes allowed in Table II will not disadvantage the stocks in any subsequent years. This finding is made until there is evidence to the contrary. In order to ensure that there is a mechanism in place within which to review the quota, I have concluded that a five year permit is appropriate.

Regulations

NMFS proposed 24 separate regulatory amendments to the existing regulations. The recommended decision of the ALJ in this proceeding contains recommendations pertaining to each of the 24 proposed amendments and, additionally, to the regulations governing this proceeding and to Section 216.24(d)(2)(iv) (numbered 25 and 26 on pages 92 and 93, respectively).

Of the proposed amendments to the regulations, the ALJ recommended adoption of 1, 2, 4, 8, 10, 11, 12, 13, 15, 16, 18, 22, 23, and 24. For the reasons stated by the ALJ, I adopt those amendments.

The ALJ also recommended adoption of the following modified proposed amendments to the regulations: (ALJ Recommended Decision pp. 64–69, 70–71, and 75–79) those numbered 6 and 7, assuming that the northern offshore spotted stock of porpoises is not depleted; that numbered 9 with the retention of the words "threat of"; and that numbered 14 with the provision of some discretion to the Regional Director, Southwest Region, in determining the necessity for an additional trial set(s). I hereby adopt those modifications to the amendments to the regulations.

The ALJ did not recommend adoption of the proposed amendments numbered 3, 20, and 21 because of lack of record support. All of these proposals were included in the notice of proposed regulations and ample opportunity for comment was provided during this proceeding. In the absence of any comments, these proposals are uncontested and I therefore adopt them according to the identical test employed by the ALJ in recommending adoption of the proposed amendments number 11, 16, and 23. Proposed amendment number 21 has been rewritten to reflect that countries of origin that do not have current findings may submit information and request a finding at any time of the year and not be bound to a September 1 deadline for filing. Countries of origin for which there is a finding must submit information for review by September 1, that pertains to the preceding calendar year.

Proposed amendment 17 contained two substantive changes to Section 216.24(d)(2)(vii), marine mammal release requirements. First, the ALJ recommended a modified amendment to the required use of speedboats which I hereby adopt. Secondly, the ALJ recommended adoption of the proposed prohibition on setting at sundown only if there is concurrently adopted a program of observer placement on all purse seining tuna fishing vessels. Such a condition is no more appropriately applied to this particular procedural requirement than it is to other such requirements and is inconsistent with the industry's sustained and successful efforts to reduce porpoise mortalities. I therefore adopt the proposed prohibition on setting at sundown without modification.

Proposed amendment numbered 19 contained the additional requirement for certain non-yellowfin tuna imports to be accompanied by a bill of lading. I have concluded that this additional requirement is unnecessary at this time because it would apply to very few cases and provide information that is available by other means. Therefore, the existing language in Section 216.24(e)(3) will remain, with the following

exception. The reference to pilchards from South Africa has become obsolete as this country has sought and been granted an import finding referred to under 50 CFR 216.24(e)(1) for such imports. Reference to pilchards from South Africa is deleted from 50 CFR 216.24(e)(3) and consequently from Section 216.24(e)(2)(i).

It is unnecessary to address ALJ recommendation 25 which dealt with the expedited procedures under which these regulations were developed, since the regulations in Part 216 Appendix terminate with the issuance of this decision.

The recommended amendment to Section 216.24(d)(2)(iv) numbered 26 (page 93 of the ALJ's recommended decision) is not adopted. The methodology for monitoring the incidental mortality of marine mammals referred to in Section 216.24(d)(2)(B) relies on fishing gear and procedural requirements that are standardized for the entire U.S. fleet. To compromise this standardization in any substantial manner would remove the existing basis for extrapolating known incidental porpoise takings reported by observers to those fishing trips that are not assigned an observer.

I have made certain additional editorial amendments to Section 216.24 for purposes of further simplification and clarification. They are non-substantive in nature. Many portions of Section 216.24 have not been amended. However, for ease of understanding, the entire section is republished herein.

In addition to the alternative I have adopted, I have considered those regulatory alternatives contained in the FEIS and the DEIS. I have concluded as a result of the review of all of the alternatives, that the regulatory regime adopted is the environmentally preferred alternative and represents the best approach under the Act. I concur in the analysis of the alternatives at pages 11–14 of the FEIS and incorporate it by reference in this final decision. The evidence simply does not support the first alternative. The quota in the second alternative far exceeds the quota that the fleet can technologically achieve. The third alternative is inconsistent with my finding that the northern offshore spotted stock is not depleted. The fourth alternative is impractical at this time, although efforts to achieve this objective will continue. Lastly, the fifth alternative, like the first, is not supported by the evidence.

Consultation

The Act requires that I consult with the Marine Mammal Commission (MMC) in promulgating regulations. The MMC was consulted prior to publication of the proposal and was a party to the proceedings. The MMC filed briefs with the ALJ and has filed exceptions to the ALJ decision with me.

Dated: October 21, 1980.

Richard A. Frank,

Administrator, NOAA.

50 CFR § 216.24 is revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

(a) (1) No marine mammals may be taken in the course of a commercial fishing operation unless: The taking constitutes an incidential catch as defined in § 216.3, a general permit and certificate(s) of inclusion have been obtained in accordance with these regulations and such taking is not in violation of such permit, certificate(s), and regulations.

(2) A vessel engaged in commercial fishing operation involving the utilization of purse seines to capture yellowfin tuna and which does not operate under a general permit and certificates of inclusion shall not carry more than two speedboats.

(b) *General Permits.*—(1) General permits to allow the taking of marine mammals, except those for which taking is prohibited under the Endangered Species Act of 1973, in connection with commercial fishing operations will be issued to persons using fishing gear in any one of the following categories:

(i) *Category 1: Towed Or Dragged Gear.* Commercial fishing operations utilizing towed or dragged gear such as bottom otter trawls, bottom pair trawls, multi-rig trawls, and dredging gear.

(ii) *Category 2: Encircling Gear, Pursue Seining Involving the Intentional Taking of Marine Mammals.* Commercial fishing operations utilizing purse seines to capture tuna by international encircling marine mammals. Only vessels that meet the fishing gear and equipment requirements contained in § 216.24(d)(2)(iv) of these regulations may be included in this category.

(iii) *Category 3: Encircling Gear, Pursue Seining not Involving the International Taking of Marine Mammals.* Commercial fishing operations utilizing pursue seining, which do not intentionally encircle marine mammals.

(iv) *Category 4: Stationary Gear.* Commercial fishing operations utilizing stationary gear such as traps, pots, weirs, and pound nets; and

(v) *Category 5: Other Gear.* Commercial fishing operations utilizing trolling, gill nets, hooks and line gear, and any gear not classified under paragraph (b)(1)(i), (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this section.

(2) Permits shall be issued as general permits to a class of fishermen using one of the general categories of gear set out above. Any member of such class may apply for a general permit on behalf of any members of the class. Subsequent to the granting of general permit, vessel owners, managing owners, or operators (as required) may make application to be included under the terms of a general permit by obtaining a certificate of inclusion. Applications for a general, permit shall contain:

(i) Name, address, and telephone number of the applicant. If the applicant is an organization or corporate entity, a copy of the corporate or organizational charter which sets forth the basis for application on behalf of a group of class of commercial fishermen must be included;

(ii) A description of permit for which application is being made;

(iii) A description of the fishing operations by which marine mammals are taken; and a statement explaining why the applicant cannot avoid taking marine mammals incidentally to commercial fishing operations;

(iv) The date when the general permit is requested to become effective;

(v) A list of the fish sought by persons requesting certificates under the general permit and the general areas of operations of their vessels.

(vi) A statement identifying the marine mammals and numbers of marine mammals which are expected to be taken under the general permit;

(vii) A statement by the applicant demonstrating that the requested taking of marine mammal species or stocks during commercial fishing operations is consistent with the purposes of the act, and the applicable regulations established under Sec. 103 of the act.

(viii) A description of the procedures and techniques that will be utilized in order that takings under the permit will be consistent with the purposes and policies of the act and these regulations; and

(ix) A certification, signed by the applicant, in the following language: I certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a general permit under the Marine Mammal Protection Act of 1972 and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or the penalties provided under the Marine Mammal Protection Act of 1972.

(3) The original and four copies of the application for general permit shall be submitted to the Assistant Administrator for Fisheries (hereinafter, the Assistant Administrator), National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235. Applications should be received not less than 180 days prior to the date upon which the permit is to become effective. Assistance may be obtained by writing the Assistant Administrator or by calling the Office of Marine Mammals and Endangered Species, telephone number 202–634–7461.

(4) A general permit shall be valid for the time period indicated on the face of the permit. General permits shall be subject to modification, suspension or revocation and may contain terms and conditions prescribed in accordance with Sec. 104(b) (2) of the act, 16 U.S.C. 1374(b) (2).

(5) The Assistant Administrator shall determine the adequacy and completeness of an application, and if found to be adequate and complete will promptly publish a notice of receipt of such application in the **Federal Register.** Interested parties will have thirty days from the date of publication in which to submit written comments with respect to the granting of such permit.

(6) If within thirty days after the date of publication of the **Federal Register** notice concerning receipt of an application for a general permit, any interested party or parties request a hearing on the application, the Assistant Administrator may within sixty days following the date of publication of the **Federal Register** notice afford such party or parties an opportunity for such a hearing. Any hearing held in connection with an application for a general permit shall be conducted in the same manner as hearings convened in connection with a scientific research or a public display permit application under Sec. 216.33.

(7) There is no fee for filing an application for a general permit.

(c) *Certificates of inclusion.*—(1) *Vessel Certificates of Inclusion.* The owner or managing owner of a vessel that participates in commercial fishing operations for which a general permit is required under this subpart shall be the holder of a valid vessel certificate of inclusion under that general permit. Such certificates shall not be transferable and shall be renewed annually. Provided five (5) days advance written notice is given, a vessel certificate holder may surrender his certificate to the Regional Office from which the certificate was issued. However, once surrendered the certificate shall not be returned nor shall a new certificate be issued before the end of the calendar year. This provision shall not apply when a change of vessel ownership occurs.

(2) *Operator's Certificate of Inclusion.* The person in charge of and actually conducting fishing operations (hereinafter referred to as the operator) on any vessel engaged in commercial fishing operations for which a Category 2 general permit is required under this subpart, shall be the holder of a valid operator's certificate of inclusion. These certificates are not transferable and will be valid only on any purse seine vessel having a valid vessel certificate of inclusion for Category 2. In order to receive a certificate of inclusion, the operator shall have satisfactorily completed required training. An operator's certificate of inclusion shall be renewed annually.

(3) A vessel certificate issued pursuant to paragraph (c)(1) of this section shall be aboard the vessel while it is engaged in fishing operations and the operator's certificate issued pursuant to paragraph (c)(2) of this section shall be in the possession of the operator to whom it was issued. Certificates shall be shown upon request to an enforcement agent or other designated agent of the National Marine Fisheries Service. However, vessels and operators at sea on a fishing trip on the expiration date of their certificate of inclusion, to whom or to which a certificate of inclusion for the next year has been issued, may take marine mammals under the terms of the new certificate.

The vessel owners or operators are obligated to obtain physically or to place the new certificate aboard, as appropriate, when the vessel next returns to port.

(4) Application(s) for certificates of inclusion under paragraph (c)(1) of this section should be addressed as follows:

(i) Category 1, 3, 4, and 5 applications:

(A) Owners or managing owners of vessels registered in Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, should make application to the Regional Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue, Seattle, Washington 98102.

(B) Owners or managing owners of vessels registered in Arizona, California, Hawaii, Nevada, and the territories of American Samoa, Guam, and the Trust Territory of the Pacific Islands should make application to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

(C) Owners or managing owners of vessels registered in Alaska should make application to the Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

(D) Owners or managing owners of vessels registered in Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin should make application to the Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

(E) Owners or managing owners of vessels registered in Alabama, Arkansas, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, and Virgin Islands, should make application to the Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Gandy Boulevard North, Duval Building, St. Petersburg, Florida 33702.

(ii) Category 2 applications: Owners or managing owners of purse seine vessels in this category shall make application to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101.

(5) Applications for vessel certificates of inclusion under paragraph (c)(1) of this section shall contain:

(i) The name of the vessel which is to appear on the certificate(s) of inclusion;

(ii) The category of the general permit under which the applicant wishes to be included;

(iii) The species of fish sought and general area of operations;

(iv) The identity of State and local commercial fishing licenses, if applicable, under which vessel operations are conducted, and dates of expiration;

(v) The name of the operator and date of training, if applicable; and

(vi) The name and signature of the applicant, whether owner or managing owner, address, and if applicable, the organization acting on behalf of the vessel.

(6) Fees. (i) Applications for certificates of inclusion under paragraph (c)(1) of this section shall contain a payment for each vessel named in the application in accordance with the following schedule:

(A) Categories 1: Towed Or Dragged Gear; 3: Encircling Gear, Purse Seining not Involving the Intentional Taking of Marine Mammals; 4: Stationary Gear; and 5: Other Gear—$10.00.

(B) Category 2: Encircling Gear, Purse Seining Involving the Intentional Taking of Marine Mammals—$200.00.

(ii) Except as provided herein, vessel owners or managing owners desiring a vessel certificate of inclusion under more than one category of the general permit will not be required to pay a full fee for each certificate. After the initial fee for a certificate is paid for each vessel, additional certificates will be issued for a fee of $.50 (fifty cents) each. However, every application for a vessel certificate under Category 2 shall contain the full fee.

(iii) Notwithstanding the provisions of subparagraph (c)(6)(i) of this section, an applicant whose income is below Federal poverty guidelines may, upon showing in his application that his income is below such guidelines, be issued a certificate under the following schedule of fee payment:

(A) Categories 1: Towed Or Dragged Gear; 3: Encircling Gear, Purse Seining not Involving the Intentional Taking of Marine Mammals; 4: Stationary Gear; and 5: Other Gear—$1.00.

(B) Category 2: Encircling Gear, Purse Seining Involving the Intentional Taking of Marine Mammals—$20.00.

(iv) A fee is not required for an operator's certificate of inclusion.

(v) The Assistant Administrator may change the amount of these required fees at any time he determines a different payment to be reasonable, and said change shall be accomplished by publication in the **Federal Register** of the new fee schedule.

(7) The Regional Office receiving applications for certificates of inclusion from vessel owners, managing owners, or operators shall determine the adequacy and completeness of such applications, and upon its determination that such applications are adequate and complete, it shall approve such applications and issue the certificate(s).

(d) Terms and conditions of certificates under general permits shall include, but are not limited to the following:

(1) *Towed or dragged gear.*—(i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage, or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(1)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to fully report and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(1)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of Section 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director to whom the certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity, but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence then it shall be reported within 48 hours after arrival in any port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit the vessel, including required marine mammals logs and gear, to an inspection upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel, or master to the penalties provided for under the act.

(2) *Encircling gear, purse seining involving the intentional taking of marine mammals.*—(i) *Quotas:*

(A) A certificated vessel may take marine mammals so long as the taking is an incidental occurrence in the course of normal commercial tuna purse seine fishing operations, and the fishing operations are under the immediate direction of a person who is the holder of a valid operator's certificate of inclusion; except that a vessel shall not encircle either:

(*1*) Pure schools of the coastal spotted dolphin (*Stenella attenuata*) stock, the Costa Rican spinner, and the eastern spinner dolphin (*Stenella longirostris*) stocks, or mixed schools including these stocks;

(*2*) Pure schools of any species of dolphin except the offshore spotted dolphin (*Stenella attenuata*) stock, the striped dolphin (*Stenella coeruleoalba*) species, and the common dolphin (*Dephinus delphis*) species; or

(*3*) Any other species or stock of marine mammals that do not have an allowable take as listed below or whose allowable take has been exceeded. The numbers of marine mammals that may be taken during each of the calendar years 1981–1985 by U.S. vessels in the course of commercial fishing operations will be limited as follows:

Quotas for Each Calendar Year 1981–85

Species/stock (management unit)	Take	Encirclement	Mortality [1]
Spotted dolphin (northern offshore)	9,606,000	5,993,000	11,890
Spotted dolphin (southern offshore)	331,000	206,000	410
Spinner dolphin (northern whitebelly)	695,000	403,000	3,075
Spinner dolphin (southern whitebelly)	46,000	27,000	205
Common dolphin (northern tropical) [2]	471,000	293,000	1,230
Common dolphin (central tropical)	927,000	298,000	2,870

Quotas for Each Calendar Year 1981–85—Continued

Species/stock (management unit)	Take	Encirclement	Mortality [1]
Common dolphin (southern tropical)	198,000	64,000	615
Striped dolphin (northern tropical)	4,000	3,000	62
Striped dolphin (central tropical)	7,000	5,000	103
Striped dolphin (southern tropical)	3,000	2,000	40

[1] The U.S. allowable mortality in any of the years 1981–85 shall not exceed 20,500.
[2] Includes Baja neritic dolphin stock.

(B) The incidental mortality of marine mammals permitted under the general permit for each category will be monitored according to the methodology published in the **Federal Register**. The Assistant Administrator shall determine on the basis of the evidence available to him the date upon which the allowable quotas will be reached or exceeded. Notice of the Assistant Administrator's determination shall be published in the **Federal Register** not less than seven days prior to the effective date.

(C) If at the time the net skiff attached to the net is released from the vessel at the start of a set, and species or stocks that are prohibited from being taken are not reasonably observable, the fact that individuals of that species or stock are subsequently taken will not be cause for issuance of a notice of violation provided that all procedures required by the applicable regulations have been followed.

(D) The general permit will be valid for a period not to exceed five years. The Assistant Administrator may, upon receipt of new information which in his opinion is sufficient to require modification of the general permit or regulations, propose to modify such after consultation with the Marine Mammal Commission. These modifications shall be consistent with and necessary to carry out the purposes of the act. Any modifications proposed by the Assistant Administrator involving changes in the quotas shall include the statements required by section 103(d) of the act. Modifications shall be proposed in the **Federal Register** and a public comment period shall be allowed. At the request of any interested person within 15 days after publication of the proposed modification in the **Federal Register**, the Assistant Administrator may hold a public hearing to receive and evaluate evidence in those circumstances where he has determined it to be consistent with and necessary to carry out the purposes of the act. Such request may be for a formal hearing on the record before an Administrative Law Judge. Within 10 days after receipt of the request for a public hearing, the Assistant Administrator shall provide the requesting party or parties with his decision. If a request is denied the Assistant Administrator shall state the reasons for the denial. Within 10 days after receipt of a decision denying a request for a formal hearing, the requesting person may file a written notice of appeal with the Administrator. Based upon the evidence presented in the notice, the Administrator shall render a decision within 20 days from receipt of the notice.

(ii) *General Conditions:* (A) Marine mammals incidentally taken shall be immediately returned to the environment where captured without further injury. In addition to the specific porpoise rescue requirements established in Sec. 216.24(d)(2), the operators of purse seine vessels shall take every possible precaution to refrain from causing or permitting incidental mortality and serious injury of marine mammals. Operators shall not set on marine mammals when conditions of wind, sea state, visibility, or the number of marine mammals and/or fish prevent the effective use of backdown and other required porpoise rescue procedures.

(B) Operators may take such steps as are necessary to protect their gear or person from damage or threat of personal injury. However, all marine mammals taken in the course of commercial fishing operations shall be subject to the definition of "Incidental catch" in Sec. 216.3 above and may not be retained except where a specific permit has been obtained authorizing the retention.

(C) Operators of all certificated vessels shall maintain daily marine mammal logs provided by the Regional Director, Southwest Region, National Marine Fisheries Service. Such logs shall be subject to inspection at the discretion of the Southwest Regional Director, or his designated personnel. Certified copies of completed marine mammal logs shall be mailed or delivered at the conclusion of each fishing voyage to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, within 48 hours after arrival in any port. If no sets involving marine mammals were made during a voyage, a marine mammal log stating such shall be submitted.

(D) The vessel certificate holder shall notify the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, telephone 714–293–6540, of any change of vessel operator within at least 48 hours prior to departing on the next scheduled trip.

(iii) *Reporting Requirements:* In accordance with Sec. 216.24(f) of these regulations, the following specific reporting procedures shall be required:

(A) The vessel certificate holder of each certificated vessel, who has been notified via certified letter from the National Marine Fisheries Service that his vessel is required to carry an observer, shall notify the field office, Southwest Region, National Marine Fisheries Service, San Diego, California, telephone 714–293–6540 at least five (5) days in advance of the vessel's departure on a fishing voyage to allow for observer placement. After a fishing voyage is initiated, the vessel is obligated to carry an observer until the vessel returns to port and one of the following conditions is met: (*1*) Unloads more than 400 tons of any species of tuna; or (*2*) unloads any amount of any species of tuna equivalent to one half of the vessel's carrying capacity; or (*3*) unloads its tuna catch after 40 days or more at sea from the date of departure. Further, the Regional Director, Southwest Region, may consider special circumstances for exemptions to this definition, provided written requests clearly describing the circumstances are received at leat ten (10) days prior to the termination or the initiation of a fishing voyage. A response to the written request will be made by the Regional Director within five (5) days after receipt of the request. A vessel whose vessel certificate holder has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(B) Masters of all certificated vessels carrying National Marine Fisheries Service observers shall allow observers to report, in coded form, information by radio concerning the accumulated take of marine mammals and other observer collected data at such times as specified by the Regional Director, Southwest Region. Individual vessel names and coded information reported by radio by the National Marine Fisheries Service observers shall remain confidential unless their release is authorized in writing by the operator of the vessel.

(C) The vessel certificate holder of each certificated vessel without an observer onboard, and fishing inside the Inter-American Tropical Tuna Commission's Yellowfin Regulatory Area is required to report within 48 hours prior to departure from port and within 48 hours after arrival in port, of the vessel's actual departure or arrival

date, including any changes in schedules that may occur after the original notification. The report shall include the name of the vessel and the location of the port of the scheduled departure or arrival, and shall be telephoned to 714–233–5511, the Southwest Regional Office's 24-hour answering service.

(D) The Regional Director, Southwest Region, will provide to the public, periodic quota status reports summarizing the estimated incidental porpoise mortality by U.S. vessels of individual species and stock.

(iv) *Vessel Gear and Equipment Requirements:* A vessel certificate issued pursuant to paragraph (c)(i) of this section will be valid only for a vessel equipped with a porpoise safety panel in its purse seine, and which uses the other gear, equipment, and procedures described herein. The vessel certificate holder shall be held responsible for providing and maintaining, in a functional and seaworthy condition, the required porpoise safety panels and all other required gear and equipment used in the course of catching and landing tuna. The requirement for the porpoise safety panel and other gear and equipment are as follows:

(A) Porpoise Safety Panel—Class I and II Vessels: For Class I purse seiners (400 short tons carrying capacity or less) and for Class II purse seiners (greater than 400 short tons carrying capacity, built before 1961), the porpoise safety panel shall be a minimum of 100 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 10 strips shall be determined at a ratio of 10 fathoms in length for each strip that the net is deep. It shall be installed beginning 75 to 100 fathoms from the bow ortza, and shall extend toward the stern of the net protecting the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel shall consist of small mesh webbing not to exceed 1¼" stretch mesh, extending from the corkline downward to a minimum depth equivalent to one strip of 100 meshes of 4¼" stretch mesh webbing.

(B) Porpoise Safety Panel—Class III Vessels: For Class III purse seiners (greater than 400 short tons carrying capacity, built after 1960), the porpoise safety panel shall be a minimum of 180 fathoms in length (as measured before installation). It shall be installed beginning 60 to 100 fathoms from the bow ortza and shall extend toward the stern of the net protecting the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel shall consist of small mesh webbing not to exceed 1¼" stretch mesh extending downward from the corkline and the base of the porpoise apron to a minimum depth equivalent to two strips of 100 meshes of 4¼" stretch mesh webbing.

(C) Porpoise Apron: Each Class III vessel shall have installed in its purse seine net, a triangular-shaped porpoise apron consisteing of small mesh not to exceed 1¼" stretch mesh, 85 to 95 fathoms in length, laced between the corkline and the porpoise safety panel. The bow end of the porpoise apron shall begin approximately 10 to 15 fathoms (depending on the depth of the net) outboard of the end of the third bunchline and extend toward the stern of the net such that the peak of the porpoise apron triangle shall coincide with the apex of the backdown channel in the net. The base of the porpoise apron shall be laced to the upper edge of the porpoise safety panel. The upper edges of the porpoise apron shall be tapered at a 5 mesh, 2 bar rate from each end such that the tapers intersect at the center of the porpoise apron. The depth of the porpoise apron at its center shall be 443 to 463 meshes.

(D) Porpoise Apron Approval: The porpoise apron shall be installed under the supervision of a National Marine Fisheries Service designated representative: A trial set(s) shall be conducted under supervision of a National Marine Fisheries Service designated representative after installation of the porpoise apron to insure proper installation and operation of the apron. During the trial set(s), the stern tiedown point and outboard bow bunchline mark shall be determined and permanently marked so as to be clearly visible from the vessel. Each time a super apron is reinstalled after removal from a net or the net depth is altered, the vessel and gear shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region, who may require that another trial set(s) be made for proper apron alignment and adjustment. The vessel certificate holder shall provide at least five (5) days advance notification to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, telephone 714–293–6540, of the time and place of installation of the porpoise apron system. The certificate of inclusion for any vessel whose certificate holder has failed to notify the National Marine Fisheries Service of the date of installation shall be invalid until completion of the apron inspection and trial set(s).

(E) Porpoise Safety Panel Markers: Each end of the porpoise safety panel and porpoise apron shall be identified with an easily distinguishable marker.

(F) Porpoise Safety Panel Hand Holds: Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, hand hold openings are to be secured so that the insertion of a 1⅜" diameter cylindrical-shaped object meets resistance.

(G) Porpoise Safety Panel Corkline Hangings: Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, corkline hangings shall be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical object with a 1⅜" diameter will not meet resistance when inserted between the cork and corkline hangings, must be tightened so that a cylindrical object with a 1⅜" diameter cannot be inserted.

(H) Bunchlines: Bunchlines, other than bow bunchlines, shall be arranged around the perimeter of the net to allow at least three towing points to be established near one-quarter, one-half, and three-quarter net from the bow ortza. A towing point must be established between two adjacent bunchlines; one bunchline reversed or unattached at both ends. Six bunchlines other than bow bunchlines are necessary to establish three towing points. The towing ends of all bunchlines which can be utilized as towing points shall be marked so as to be clearly visible to speedboat drivers. At least a 20-fathom length of corkline shall be free from bunchlines at the apex of the backdown channel.

(I) Speedboats: Certificated vessels engaged in fishing operations involving setting on marine mammals shall carry a minimum of two speedboats in operating condition. All speedboats carried aboard purse seine vessels and in operating condition shall be rigged with towing bridles and towlines. Speedboat hoisting bridles shall not be substituted for towing bridles.

(J) Rubber Raft: An inflatable rubber raft suitable to be used as a porpoise observation-and-rescue platform, shall be carried on all certificated vessels.

(K) Facemask and Snorkel: At least two facemasks and snorkels shall be carried on all certificated vessels.

(L) Floodlights and Spotlight: All certificated vessels shall be equipped with adequate floodlights suitable for use in darkness to attract fish toward the main vessel and spotlight to intermittently illuminate the backdown channel and apex.

(M) Vessel certificate holders may petition for an exemption from the regulations regarding vessel gear and equipment for the purpose of experimenting with alternate gear or procedures designed to reduce incidental serious injury and mortalities of marine mammals in the course of commercial fishing. The petition shall be made in writing to the Director, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, and shall include detailed specifications of the proposed gear and procedure modifications. Modifications may be granted upon review and approval, on a trip by trip basis, only if a National Marine Fisheries Service designated representative is available and accompanies the vessel on the approved trip.

(v) *Vessel Inspection:* (A) Annual: At least once during each calendar year, purse seine nets and other gear and equipment required by these regulations shall be made available for inspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region.

(B) Reinspection: Purse seine nets and other gear and equipment required by these regulations shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region. The vessel certificate holder shall notify the Fleet Assistance Section, Southwest Region, National Marine Fisheries Service, 1140 N. Harbor Drive, Room 7, San Diego, California 92101, telephone 714–293–6540 of any net modification at least five (5) days prior to departure of the vessel on its next scheduled trip in order to determine whether a reinspection or trial set would be required.

(C) Failure to Pass Inspection: A certificate of inclusion for a vessel with gear which is not in compliance with these regulations or maintained in a functional and seaworthy condition, shall be invalid until such deficiencies in gear or conditions are corrected and approved by an authorized National Marine Fisheries Service Inspector.

(vi) *Operator Training Requirements.* All operators shall maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session conducted under the auspices of the National Marine Fisheries Service in order to obtain their certificate of inclusion. At the training session an attendee shall be instructed concerning the provisions of the Marine Mammal Protection Act of 1972, the regulations promulgated pursuant to the Act, and the fishing gear and techniques which are required or will contribute to reducing serious injury and mortality of porpoise incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year certificate of inclusion will not be required to attend additional formal training sessions unless there are substantial changes in the Act, the regulations, or the required fishing gear and techniques. Additional training may be required for any operator who is found by the Regional Director, Southwest Region, to lack proficiency in the procedures required.

(vii) *Marine Mammal Release Requirements:* All operators shall use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(A) Use of Speedboats: On every set involving marine mammals, two speedboats equipped for towing shall be immediately available. At least one shall be manned and in the water. The second one, may be manned or unmanned, and may remain either in the water or in the davits. Both shall be ready for use until backdown commences. Speedboats shall tow on bunchlines whenever net collapse begins or on the corkline if canopies of loose webbing form whenever necessary to prevent marine mammal entrapment.

(B) Backdown Procedure: Backdown shall be performed following a purse seine set in which marine mammals are captured in the course of catching and landing tuna, and shall be continued until it is no longer possible to remove live marine mammals from the net by this procedure. Thereafter, other release procedures required shall be continued until all live animals have been released from the net.

(C) Hand Rescue: During backdown, a minimum of two rescuers shall aid with the release of marine mammals. If live marine mammals remain in the net after backdown, a minimum of two rescuers shall hand release them.

(D) Prohibited Use of Sharp or Pointed Instrument: The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(E) Use of Rubber Raft, Facemask, and Snorkel: A rubber raft suitable as a porpoise observation and rescue platform shall be launched inside the net near the time of tying down for the backdown maneuver. The raft shall be used by a crewman to assist the other rescuer(s) in disentangling and releasing live marine mammals from the net. The crewman in the raft shall use the facemask and snorkel to determine whether all live marine mammals are out of the net and, if they are not, make every effort to remove them before backdown is terminated.
Taking into consideration the safety of all personnel, all live marine mammals that remain in the net after backdown shall be herded to areas where they can be easily released.

(F) Prohibited Brailing of Live Marine Mammals: All release procedures shall continue until all live marine mammals are removed from the net prior to initiating the brailing operation. Brailing live marine mammals from the net is prohibited.

(G) Prohibited Setting at Sundown: On every set involving marine mammals, the net skiff shall be released at least one and one-half hours before sunset; release of the net skiff after this time is prohibited.

(H) Use of Lights: If the backdown maneuver or other required release procedures continue past one-half hour after sunset, lights shall be used to insure that release procedures are properly performed and that all live marine mammals are removed from the net. Floodlights shall be used to attract fish toward the main vessel. A spotlight shall be intermittently used to illuminate the backdown channel and apex until all live marine mammals are removed from the net.

(viii) *Penalties:* Failure to comply with the provisions of the general permit or these regulations, including but not limited to: failure to submit upon demand to vessel, gear, equipment, or proficiency inspection or examination by authorized National Marine Fisheries Service personnel; falsification of any required logs and reports; or failure to satisfy the requirements of any provisions of these regulations will subject vessel owners, managing owners, masters, or operators to revocation of the vessel certificate of inclusion and/or to the right to be included under a general permit, and further subject vessel owners, managing owners, masters, and operators to penalties provided for under the Act, including revoking the right to be an operator as defined in Sec. 216.24(c)(1).

(3) *Encircling Gear, Purse Seining Not Involving the Intentional Taking of Marine Mammals.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(3)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(3)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of Sec. 216.3 with respect to "Incidental catch," and may be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) the location, time, and date of the death or injury;

(B) the identity and number of marine mammals killed or injured; and

(C) a description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with the provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit to an inspection of the vessel, marine mammal logs and required gear, upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel owner or master to the penalties provided for under the Act.

(4) *Stationary Gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(4)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (ii) were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of Sec. 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) the location time, and date of the death or injury;

(B) the identity and number of marine mammals killed or injured; and

(C) a description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with the provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit to an inspection of the vessel, marine mammal logs and required gear, upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel, owner or master to the penalties provided for under the Act.

(5) *Other Gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(5)(ii) of this section have

been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(5)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of Sec. 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent, or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) the location, time, and date of the death or injury;

(B) the identity and number of marine mammals killed or injured; and

(C) a description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with the provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit to an inspection of the vessel, marine mammal logs and required gear, upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel, or master to the penalties provided for under the Act.

(e) *Importation:* (1) It shall be illegal to import into the United States any fish, whether fresh, frozen or otherwise prepared, if such fish were caught in a manner prohibited by these regulations or in a manner that would not be allowed in circumstances where a person subject to the jurisdiction of the United States would be required to have a certificate of inclusion in a general permit hereunder, whether or not any marine mammals were in fact taken incidental to the catching of the fish, unless the Assistant Administrator makes a finding and publishes such finding in the **Federal Register**, that such fishing, although not in conformity with the specific requirements of these regulations, is accomplished in a manner which does not result in an incidental mortality and serious injury rate in excess of that which results from fishing operations under these regulations.

(2) The following fish and categories of fish, which the Assistant Administrator has determined are involved with commercial fishing operations which cause the death or injury of marine mammals, are subject to the prohibitions and documentation requirements of this section:

(i) Salmon and halibut. The following U.S. Tariff Schedule Item Numbers identify these categories of salmon and halibut products which are imported into the United States and are to be covered by the documentation and certification regulations of § 216.24(e)(3):

110.20–25 Halibut, fresh or chilled.
110.20–30 Halibut, frozen.
110.20–45 Salmon, fresh or chilled.
110.10–50 Salmon, frozen.
110.70–40 Halibut, other—except portion controlled steaks.
111.48–00 Salmon, salted.
111.88–00 Salmon, smoked or kippered.
112.18–00 Salmon, preserved, not in oil.

(ii) Yellowfin tuna. The following U.S. Tariff Schedule Item Numbers identify the categories of tuna and tuna products under which yellowfin tuna is imported into the United States, and are subject to the importation restrictions of paragraph (e)(4) of this section after December 31, 1977:

110.10–20 Tuna; yellowfin, whole fish.
110.10–25 Tuna; yellowfin, eviscerated, head on.
110.10–30 Tuna; yellowfin, eviscerated, head off.
110.10–37 Tuna; yellowfin, other.
112.30–40 Tuna; canned, other than white meat, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.
112.34–00 Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.
112.90–00 Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.

(3) Salmon and Halibut. All fish and categories of fish listed in paragraph (e)(2)(i) of this section shall be denied entry into the United States unless accompanied by a separate Fisheries Certificate of Origin (Standard Form 369–1) from each country whose flag vessels caught fish involved in the importation. The Fisheries Certificate of Origin should include the following information:

(i) The country of origin; and

(ii) The identity and quantity of fish; and, either

(iii) After the Assistant Administrator has published the finding referred to in paragraph (e)(1) of this section, a statement from a responsible official of the country of origin that the fishing technology permitted by the country of origin with respect to the species of fish presented for importation into the United States does not result in a rate of serious injury or death to marine mammals in excess of that which results from U.S. commercial fishing operations as prescribed by these regulations. Country of origin for the purposes of this section shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments; or

(iv) A statement by a responsible official of the country of origin or the master of the vessel which caught the fish that such fish were not caught in a manner prohibited for U.S. fishermen by these regulations. The statement shall identify the species, quantity, and exporter of the fish to which the statement refers; or

(v) Any nation may certify to the Assistant Administrator either (A) that all of its vessels fishing under its flag are fishing in conformance with these regulations; or (B) a list of the vessels, by name and official number, fishing under such nation's flag which are fishing in conformance with these regulations; or (C) that all of the vessels fishing under such nation's flag, with the exception of any vessels specifically listed by name and official number, are fishing in conformance with these regulations. If methods (B) or (C) are

used, the shipping documentation must also show the name and official number of the vessel which caught the fish presented for importation. The Assistant Administrator may then make a finding, and publish such finding in the **Federal Register**, that fish imports listed in paragraphs (e)(2)(i) from a nation or from an identified segment of a nation's fishing fleet, are exempted from the documentation provisions of this section.

(4)(i) Yellowfin tuna: All shipments of fish and products listed in paragraph (e)(2)(ii) of this section, from any nation, shall not be entered into the United States for consumption or withdrawn from warehouse for consumption unless a finding has been made pursuant to paragraph (e)(5)(i) of this section, and unless accompanied by the following documentation: (A) A separate Yellowfin Tuna Certificate of Origin (Standard Form 370–1) and (B) a bill of lading from each country whose flag vessels caught yellowfin tuna involved in the importation. (ii) The Yellowfin Tuna Certificate of Origin must include the following information: (A) Country of origin of the fishing vessel(s) involved; (B) Exporter (name and address); (C) Consignee (name and address); (D) Identity and quantity of the yellowfin tuna to be imported, listed by U.S. Tariff Schedule Number; (E) Name of vessel(s) which caught the yellowfin tuna; (F) Fishing method used (i.e., purse seine, longline, pole and line, etc.); (G) Other documentation as may be required by the Assistant Administrator, subsequent to granting a finding in paragraph (e)(5) of this section; (H) Must be signed by either a responsible government official of the country whose flag vessel caught the fish or the vessel master, below the following certification statements:

I certify that the yellowfin tuna described in (D) above was caught by flag vessels of a country either, (1) not required to obtain a finding from the United States Department of Commerce (National Marine Fisheries Service) under 50 CFR 216.24(e)(5), and the fish was not caught in a manner prohibited for United States fishermen by the United States Marine Mammal Regulations 50 CFR 216.24(d)(2), or (2) which has been found by the United States Department of Commerce (National Marine Fisheries Service) to be in conformance with the United States Marine Mammal Regulations 50 CFR 216.24(e)(5).

I certify that the above information is complete, true and correct to the best of my knowledge and belief. I understand that my making a false statement may subject me to the criminal penalties under the Marine Mammal Protection Act of 1972.

(I) Must also be signed by the exporter, under the following declaration:

The undersigned hereby declares that, based on the above statements, the yellowfin tuna herein offered for importation into the United States, was caught by flag vessels of (country) in conformance with the United States Marine Mammal Regulations 50 CFR 216.24.

(5)(i) Any tuna or tuna products in the classifications listed in paragraph (e)(2)(ii) of this section from countries of origin (as documented under (e)(4) above) whose vessels operate in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean, as determined by the Assistant Administrator; shall not be entered into the United States for consumption or subsequently withdrawn from warehouse for consumption unless the Assistant Administrator makes a finding in consultation with the U.S. Department of State, and publishes such finding in the **Federal Register** that fishing operations in the country of origin are conducted in conformance with U.S. regulations and standards as stated in paragraph (d)(2) of this section. The Assistant Administrator may make a finding that, although not in conformity with these regulations, such fishing is accomplished in a manner which does not result in an incidental mortality and serious injury in excess of that which result from U.S. fishing operations under these regulations. Upon such a finding unloading may be allowed. Country of origin for the purposes of this section (Sec. 216.24(e)) shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments.

(ii) Countries of origin desiring to obtain a finding which will allow the importation of products listed in paragraph (e)(2)(ii) of this section must submit, by appropriate government official, to the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235, the following information: (A) A statement of the quantity and type (identified by U.S. Tariff Schedule Item Numbers listed in paragraph (e)(2)(i) of this section) of fish or fish products expected to be imported into the U.S.; (B) A detailed description of the fishing technology and procedures utilized in tuna purse seine fishing to protect marine mammals so that a determination of conformance with Sec. 216.24(d)(2) of these regulations can be made, or the effectiveness of any other equivalent technology or procedures can be assessed; (C) A statement of the number of marine mammals killed or seriously injured (by species) incidental to the yellowfin tuna purse seine operations on porpoise for the previous year, and the manner in which the information was obtained (logbooks, observers, interviews, or other procedures); (D) A statement of the number of marine mammals which will be allowed to be killed or seriously injured annually incidental to yellowfin tuna purse seine operations; (E) A statement of the procedures to be required, including quotas and other controls which will meet the U.S. requirements to limit the level of mortality with specific reference to any species or stock designated as depleted; and (F) A list of vessels which may be involved in the taking of marine mammals incidental to yellowfin tuna purse seining.

(iii) The Assistant Administrator will review each nation's findings annually upon receipt of information required under paragraph (e)(5)(ii) which pertains to a preceeding calendar year, and a request of a continuation of a finding by the country of origin. This information should be submitted by September 1 preceding the calendar year for which the exportation is requested. The Assistant Administrator may require verification of statements made in connection with requests to allow importations. The Assistant Administrator will reconsider a finding upon a request from, and the submission of additional information from, the country of origin.

(6) *Fish refused entry.* If fish is denied entry under the provisions of Sec. 216.24(e)(3) or Sec. 216.24(e)(4), the District Director of Customs shall refuse to release the fish for entry into the United States and shall issue a notice of such refusal to the importer or consignee.

(7) *Release under bond. Provided however,* that fish not accompanied or covered by the required documentation or certification when offered for entry may be entered into the United States if the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required documentation or certification. The bond shall be in the amount required under 19 CFR 25.4(a). Within 90 days after such Customs entry, or such additional period as the District Director of Customs may allow for good cause shown, the importer or consignee shall deliver a copy of the required documentation or certification to the District Director of Customs, and an original of the required documentation or a copy of the certification to the Regional Director of the National

Marine Fisheries Service, unless the District Director of Customs has received notification from the National Marine Fisheries Service that the fish is covered by a certification. If such documentation, certification, or notification is not delivered to the District Director of Customs for the port of entry of such fish within 90 days of the date of Customs entry or such additional period as may have been allowed by the District Director of Customs for good cause shown, the importer or consignee shall redeliver or cause to be redelivered to the District Director of Customs those fish which were released in accordance with this paragraph. In the event that any such fish is not redelivered within 30 days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of bond given on Form 7551. When the transaction has been charged against a bond given on Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence under a bond given on Form 7551. Fish released for entry into the United States through use of the bonding procedure provided in this paragraph shall be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act if (i) the required documentation or certification is not delivered to the Regional Director of the National Marine Fisheries Service within 90 days of the date of Customs entry, or such additional period as may have been allowed by the District Director of Customs for good cause shown, or (ii), the required certification is not on file in the office of the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atomspheric Administration, Department of Commerce, Washington, D.C. 20235, within this 90 day period or such additional period as may have been allowed by the District Director of Customs for good cause shown. Fish refused entry into the United States shall also be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act.

(8) *Disposition of fish refused entry into the United States; redelivered fish.* Fish which is denied entery under Sec. 216.24(e)(3) or Sec. 216.24(e)(4) or which is redelivered in accordance with Sec. 216.24(e)(7) and which is not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under Customs laws and regulations. *Provided however,* that any disposition shall not result in an introduction into the United States of fish caught in violation of the Marine Mammal Protection Act of 1972.

(f) *Observers.*—(1) The vessel certificate holder of any certificated vessel shall, upon the proper notification by the National Marine Fisheries Service, allow an observer duly authorized by the Secretary to accompany the vessel on any or all regular fishing trips for the purpose of conducting research and observing operations, including collecting information which may be used in civil or criminal penalty proceedings, forfeiture actions, or permit or certificate sanctions.

(2) Research and observation duties shall be carried out in such a manner as to minimize interference with commercial fishing operations. The navigator shall provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. No owner, master, operator, or crew member of a certificated vessel shall impair or in any way interfere with the research or observations being carried out.

(3) Marine mammals killed during fishing operations which are accessible to crewmen and requested from the certificate holder or master by the observer shall be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals designated as biological specimens by the observer shall be retained in cold storage aboard the vessel until retrieved by authorized personnel of the National Marine Fisheries Service when the vessel returns to port for unloading.

(4) The Secretary shall provide for the payment of all reasonable costs directly related to the quartering and maintaining of such observers on board such vessels. A vessel certificate holder who has been notified that the vessel is required to carry an observer, via certified letter from the National Marine Fisheries Service, shall notify the office from which the letter was received at least five days in advance of the fishing voyage to facilitate observer placement. A vessel certificate holder who has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(5) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, influence or attempt to influence an observer placed aboard a vessel.

(g) *Penalties and rewards:* Any person or vessel subject to the jurisdiction of the United States shall be subject to the penalties provided for under the Act for the conduct of fishing operations in violation of these regulations. The Secretary shall recommend to the Secretary of the Treasury that an amount equal to one-half of the fine incurred but not to exceed $2,500 be paid to any person who furnishes information which leads to a conviction for a violation of these regulations. Any officer, employee, or designated agent of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

[FR Doc. 80-33529 Filed 10-30-80; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fisheries; Clarification to Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Notice of clarification to regulations.

SUMMARY: On January 3, 1980 (45 FR 786), final regulations were published implementing an amendment to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries. In those regulations three Appendices (A, B, and C) were published on pages 794–97. References to those Appendices occurred at three places in § 652.23 on page 793.

Those regulations are being codified in the Code of Federal Regulations (the Code). The three Appendices will not be published in the Code. In addition, the three references to the Appendices which occur on page 793 are deleted.

EFFECTIVE DATE: This clarification is effective on September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Denton R. Moore, Chief, Permits and Regulations Division, National Marine Fisheries Service, Washington, D.C. 20235. Telephone: (202) 634–7432.

(16 U.S.C. 1801 *et seq.)*

Signed at Washington, D.C. this 29th day of October, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-34178 Filed 10-30-80; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 45, No. 213
Friday, October 31, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

7 CFR Part 2852

U.S. Standards for Grades of Frozen Strawberries

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 25, 1980, the Food Safety and Quality Service published in the **Federal Register** a document proposing to amend the U.S. Standards for Grades of Frozen Strawberries. The proposed rule would (1) provide a definition for halves style; (2) convert to statistical sampling; (3) replace dual grade nomenclature with single letter designations; (4) establish standards similar to those of the Food and Drug Administration and the Codex Alimentarius; and (5) assign "A" or "B" grades to all sizes of containers while limiting other quality levels to nonretail size containers over 2.7 kg (6 lbs.). In response to a request for additional time to study the proposal and gather data, the Department is extending the comment period to September 30, 1981.

DATE: Comments must be received by September 30, 1981.

ADDRESS: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, Food Safety and Quality Service, Compliance Program, U.S. Department of Agriculture, Room 2637, South Agriculture Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Howard W. Schutz, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6247. The Draft Impact Analysis describing the proposed rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Significance

The proposal was reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant".

Background

On April 25, 1980, the Food Safety and Quality Service published a proposed rule (45 FR 27944–27948) to amend the United States grade standards for frozen strawberries which would (1) provide for a definition of halves style of frozen strawberries; (2) follow the USDA policy of replacing a dual grade nomenclature with single grade designations (Grades "A" and "B"); (3) convert to statistical (attributes) sampling for inspection of frozen strawberries; and (4) assign the grades of "A" or "B" to all sizes of containers while limiting the quality level, "Strawberries for Remanufacture", to nonretail size containers over 2.7 kg (6 lbs.). Interested persons were given until October 31, 1980, to comment.

The Department has been requested by the American Frozen Food Institute to extend the period of time within which data, views, or arguments may be submitted to September 30, 1981. The request stated that additional time was needed in order to gather data during the actual frozen strawberry processing season.

Since the Department is interested in receiving meaningful data, the Department has determined that these circumstances are considered sufficient justification for extending the comment period to September 30, 1981.

Done at Washington, D.C. on October 27, 1980.

Thomas P. Grumbly,

Acting Administrator, Food Safety and Quality Service.

[FR Doc. 80-33944 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Parts 317 and 381

Advance Notice of Proposed Rulemaking; Prior Labeling Approval Pilot Program

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food Safety and Quality Service (FSQS) in an effort to streamline regulatory procedures is considering amending the meat and poultry inspection regulations to include the delegation of certain labeling approval authority to Inspectors-in-Charge in the field. To test the feasibility of such delegation, a 120-day pilot program will begin December 1, 1980, in three selected meat and poultry inspection areas. The three selected areas include: Missouri (Southwestern Region), Kentucky (Southeastern Region), and the Hyattsville area which includes Maryland, Delaware, and the District of Columbia (Northeastern Region).

DATES: Pilot program to begin December 1, 1980. Comments must be received on or before December 31, 1980.

ADDRESSES: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, Food Safety and Quality Service, Compliance Program, Room 2637, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250. Oral comments to Ms. Joan Moyer Schwing, (202) 447–4293. (For additional information on comments, see Supplementary Information).

FOR FURTHER INFORMATION CONTACT: Ms. Joan Moyer Schwing, Deputy Director, Meat and Poultry Standards and Labeling Division, Compliance Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250. The Task Force Report referred to in this Notice is available for review by the public in the regulations Coordination Division.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments and information concerning this Notice. Written comments must be sent in duplicate to the Regulations Coordination Division. Comments should bear a reference to the date and page number of this issue of the **Federal Register**. Any person desiring opportunity for oral presentation of views concerning this Notice must make such request to Ms. Schwing so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to this Notice will be