propriate parties will receive decisions, findings, recommendations, or advice from the Board in writing. Those individuals or agency representatives who are invited to appear before the Board will have access to the written record of that part of the meeting related to their appearance.

(c) Position papers and other related documents, which interested parties (if invited to do so by the Chairperson) or members of the Board wish to provide as a basis for discussion at a meeting should be submitted to the Executive Secretary in 12 copies at least 10 days prior to the date of the meeting so that the Executive Secretary may circulate the documents to the members in sufficient time for review. The 10-day rule for distribution of documents may be waived by the Executive Secretary if, in his or her opinion, the situation so demands.

§ 15.3 Voting and decisions.

(a) Voting will be by members or their alternates. An ad hoc alternate member who attends a meeting in place of the member or regular alternate will also have the right to participate fully in the proceedings of that meeting and to vote.

(b) As a general rule, proxy voting will not be permitted. If someone participates in the major portion of the discussion and must leave shortly before the actual voting takes place, that person, at the Chairperson's discretion, may leave his proxy vote with the Chairperson.

(c) Motions will first be presented in a positive, rather than a negative version; that is, a motion will be considered first to accept or approve a policy, a practice or recommendation, rather than to reject it, and a majority vote in favor of it will be necessary. Therefore, a tie vote will be considered as not having approved that policy or practice. Where the question of forwarding a recommendation to the head of a foreign affairs agency is involved, the recommendation shall be forwarded together with the statement that the Board's consideration of that recommendation resulted in a tie vote, if such is the case. The Chairperson may vote on all issues.

(d) The Executive Secretary will prepare for the Chairperson's signature, a memorandum to the head of the agency affected transmitting the Board's decision and requesting that the head of the agency advise the Chairperson within 30 days as to his or her action on the decision.

§ 15.4 Issues of consultability.

(a) Agency management will inform the recognized organization in writing, in advance, of any proposed changes in personnel policies and procedures which affect working conditions, so that the recognized organization can exercise its rights to consult, to seek determination as to whether an issue is consultable, or to confer, as provided in Executive Order 11636.

(b) The Board will act expeditiously on any appeal. Parties are required to raise the procedural issues of consultability in a timely fashion at the early stages of the consultation process, as presently required by agency regulations. Timeliness requirements will apply to each new proposal or issue which is presented in writing during consultations.

(c) The Board will not entertain, act upon or refer to the Employee-Management Relations Commission (Section 5 of Executive Order 11636) any claims of consultability unless the parties have complied with the requirement of prior notification in writing as delineated in § 15.4(a) and with the timeliness requirements as delineated in § 15.4(b).

(d) Pursuant to section 9(a) of Executive Order 11636, however, a foreign affairs agency or recognized organization may, within 10 days after transmittal of the Board's decision to the agency head, raise before the agency head, its view that the Board's decision is violative of law, applicable higher-level regulations, or Executive Order 11636. This paragraph may not be considered as restrictive as to other rights and authorities created by Section 9(a) of the Order.

§ 15.5 Miscellaneous.

(a) Members of the Board and the observer may appoint a liaison officer of their own choosing to serve as their point of contact with the Executive Secretary on administrative, technical, or other matters related to the Board.

(b) In the case of the foreign affairs agencies, no one responsible for personnel operations or employee-management relations in their agencies or reporting to someone holding such responsibilities shall be eligible to perform liaison officer duties in the Board's consideration of an appeal under Section 9 of Executive Order 11636.

[FR Doc.75-28785 Filed 10-24-75;8:45 am]

Title 31—Money and Finance: Treasury

CHAPTER I—MONETARY OFFICES, DEPARTMENT OF THE TREASURY

PART 51—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Nondiscrimination Regulations

Pursuant to the authority vested in the Secretary of the Treasury by the State and Local Fiscal Assistance Act of 1972 (the Revenue Sharing Act), approved October 20, 1972, the Department of the Treasury hereby amends the nondiscrimination regulations in Part 51 of Subtitle B of Title 31, Code of Federal Regulations, which became effective April 5, 1973 (38 FR 9132) for entitlement periods beginning on or after January 1, 1973.

On July 24, 1975 the Department of the Treasury published civil rights regulations under a notice of proposed rulemaking (40 FR 30974). Interested persons were invited to submit written comments on or before August 21, 1975. Also those proposed regulations were submitted to the Advisory Commission on Intergovernmental Relations for distribution to State and local governments under the Office of Management and Budget Circular A-85 review and comment procedure. As a result of both of these procedures, the Department received 54 comments on the proposed regulations. Comments are available for inspection and copying at the Library, Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, D.C. 20220.

Each of the written comments was carefully reviewed and the Department is now publishing the Office of Revenue Sharing civil rights regulations with the following changes.

Section 51.52(b) (iii), (vi), and (vii) are revised to insert the words "any person" in order to clarify the scope of protection afforded in each of these clauses.

Section 51.52(b)(4) encourages recipient governments to use revenue sharing funds to correct an imbalance in services or facilities resulting from prior discriminatory practice. A new sentence is added to that provision to make clear that when a program has been funded with revenue sharing funds, thus establishing jurisdiction by the Office of Revenue Sharing, then any imbalance of services or facilities must be ameliorated.

Section 51.53(a) is revised to state that, in addition to the specific employment practices that are within the scope of the nondiscrimination provision, that provision also covers all other terms and conditions of employment.

The Department of the Treasury has been advised that the Equal Employment Opportunity Coordinating Council, established by 42 U.S.C. 2000e-14, is working to prepare a set of guidelines for uniform application by the various Federal agencies having responsibility for implementation and enforcement of equal employment opportunity legislation, orders and policies. When such guidelines are approved by the Council, section 51.53(b) will, if necessary, be modified accordingly.

Section 51.53(d) addresses employment compliance reviews. In proposed form, paragraph (d) stated that employment compliance reviews would be scheduled by the Office of Revenue Sharing where programs funded with revenue sharing funds show a significant disparity between the percentage of minority employees and the percentage of minority persons in the work force. This paragraph is revised to include women in this comparison for purposes of identifying possible discrimination based on sex.

Section 51.54(c)(2) deals with sex discrimination in the area of fringe benefits. This provision in proposed form required recipient governments to justify any unequal fringe benefit contributions or benefits to men and women in a revenue sharing funded program as not being an arbitrary distinction based on sex. The section has been modified to make it an unlawful employment practice to provide for both unequal benefits and unequal contributions in the areas of insurance, pension or retirement plans, welfare or other fringe benefit programs. Further, the section makes it an unlawful employment practice to provide for either unequal benefits or unequal contributions in these areas unless directly related to actuarial differences. The section requires the recipient government to provide, upon request of the Secretary, proof of such actuarial differences.

As in the case of § 51.53(b), the guidelines being prepared by the Equal Employment Opportunity Coordinating Council will also concern sex discrimination in the area of fringe benefits. When such guidelines are approved by the Council, § 51.54(c)(2) will, if necessary, be modified accordingly.

Section 51.54(d)(1) covers sex discrimination based on family status. In proposed form, that section permitted recipient governments to take an employment action based on the employee's status as head of household or principal family wage earner so long as there was no distinction based on sex. Because this status principally attaches to male employees, this provision is being revised to prohibit a recipient government from taking any employment action based on anyone's status as head of household or principal family wage earner. Section 51.54(d)(1) is also being revised to state that a recipient government that takes an employment action which treats a woman differently because of her pregnancy must demonstrate that the pregnancy of that person prevents adequate job performance by that individual instead of demonstrating that pregnancy in general prevents adequate job performance.

Section 51.54(d)(2) regarding pregnancy as a temporary disability is not changed in substance. While this section is being promulgated in final form, it should be noted that the Supreme Court has granted certiorari in the case of *Wetzel v. Liberty Mutual Insurance Company*, 511 F. 2d 199 (Sup. Ct. Docket No. 74-1245), in which the validity of standards similar to those established in § 51.54(d)(2) are being challenged. It is anticipated that the Court will hear arguments early in the October 1975 Term. Should the standards established by the Equal Employment Opportunity Commission receive an adverse ruling in the *Wetzel* case, § 51.54(d)(2) will, if necessary, be modified to comply with the decision.

Section 51.54(e) sets forth the exemption from the sex discrimination prohibition where sex is a bona fide occupational qualification. That provision is revised to include the judicial language that requires an employer to demonstrate that all, or substantially all, of one sex are unable to perform the job in question in order to take an employment action based on a bona fide occupational qualification.

Section 51.56(a) states that recipient governments must provide access to relevant information to authorized representatives of the Office of Revenue Sharing. Because the Attorney General has been given independent authority to enforce nondiscrimination in revenue sharing funded programs by section 122(c) of the Act, this provision is being revised to require that representatives of the Department of Justice also be given access to information relating to possible cases of discrimination.

Section 51.57(a) stated in proposed form that anyone or any class which believed themselves to be subjected to discrimination prohibited by the regulations could file an administrative complaint with the Office of Revenue Sharing. This provision is revised to conform to the existing policy of the Office of Revenue Sharing which allows any person, regardless of his or her relation to the alleged discrimination, to file an administrative complaint.

Section 51.58(b) states the requirement that any recipient government which has been determined to have violated the civil rights regulations must take affirmative action to overcome the effects of discriminatory actions and practices. A new sentence is being added to this paragraph to state that the Secretary will determine the steps necessary to bring the recipient government into compliance and that the Secretary will determine a timetable for the accomplishment of those steps.

Finally, § 51.62 concerning delegation by the Secretary of responsibilities to enforce these civil rights regulations is being added to Subpart E. This section is similar to the prior delegation provision in § 51.32(g). Section 51.62 provides that the Secretary may delegate enforcement responsibility to other Federal agencies and agencies of State governments. However, the authority to review the decision of an administrative law judge may only be delegated to officials of the Department of the Treasury.

Because the purpose of these regulations is to provide immediate guidance to the States and units of local government in order that the requirements of the Act be complied with, it is hereby found impracticable to issue such regulations subject to the effective date limitation of 5 U.S.C. 553(d). These regulations shall become effective October 22, 1975.

These regulations are issued under the authority of the State and Local Fiscal Assistance Act of 1972, as amended, Title I, Public Law 92-512 (31 U.S.C. Supp. III 1221-1263) and Treasury Department Order No. 224, dated January 26, 1973 (38 F.R. 3342).

Dated: October 22, 1975.

[SEAL] JOHN K. PARKER,
Acting Director,
Office of Revenue Sharing.

Approved:

EDWARD C. SCHMULTS,
Under Secretary.

A new subpart E is added to Part 51. Current subparts E and F are redesignated F and G.

Subpart E—Nondiscrimination in Programs Funded With Entitlement Funds

AUTHORITY: State and Local Fiscal Assistance Act of 1972, as amended, Title I, Pub. L. 92-512 (31 U.S.C. Supp. III 1221-1263) T.D. 224, dated January 26, 1973 (38 FR 3342).

Subpart E—Nondiscrimination in Programs Funded With Entitlement Funds

§ 51.50 Purpose.

The purpose of this subpart is to effectuate Sec. 122 of the Act to the end that no person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with entitlement funds made available pursuant to subtitle A of title I of the Act.

§ 51.51 Definitions.

Unless the context requires otherwise, as used in this subpart, the term:

(a) "Facility" includes all or any part of structures, equipment, or other real or personal property or interests therein.

(b) "Funded" means that entitlement funds have been made available for expenditure in a designated program or activity through legislative action.

(c) "Program or activity" means any function conducted by an identifiable administrative unit of the recipient government, or by any other unit of government or private contractor receiving entitlement funds from the recipient government.

§ 51.52 Discrimination prohibited.

(a) *General.* No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with entitlement funds made available pursuant to subtitle A of title I of the Act.

(b) *Specific discriminatory actions prohibited.* (1) A recipient government shall not, under any program or activity to which the regulations of this subpart apply, directly or through contractual or other arrangements, on the grounds of race, color, national origin, or sex:

(i) Deny any service or other benefit provided.

(ii) Provide any service or other benefit which is different, or is provided in a different form from that provided to others.

(iii) Subject any person to segregated or separate treatment in any facility or in any matter or process related to receipt of any service or benefit.

(iv) Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or other benefit.

(vi) Deny any person an opportunity to participate in a program or activity as an employee.

(vii) Deny any person an equal opportunity to participate as appointed members of planning or advisory bodies in connection with the disposition of entitlement funds.

(2) A recipient government may not utilize criteria or methods of administration which have the effect of:

(i) Subjecting individuals to discrimination on the basis of race, color, national origin, or sex.

(ii) Perpetuating the results of past discriminatory practices.

(iii) Defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

(3) A recipient government may not, with respect to any program or activity to which this subpart applies, make selections of site or location of facilities which have the effect of:

(i) excluding individuals from such facilities.

(ii) Denying the individuals the benefits of such facilities.

(iii) Subjecting individuals using the facilties to discrimination on the ground of race, color, national origin, or sex.

(4) Recipient governments are encouraged to take action with entitlement funds to ameliorate an imbalance in services or facilities provided to any geographic area or specific group in order to overcome the effects of prior discriminatory practice or usage. If entitlement funds are allocated to a program or activity which currently provides an imbalance of services or facilities to persons protected by this subpart, then such imbalance must be ameliorated.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

§ 51.53 Employment.

(a) *Employment practices.* In any program or activity funded in whole or in part with entitlement funds, a recipient government may not (directly or indirectly through contractual or other arrangements) subject any individual to discrimination on the ground of race, color, national origin, or sex in its employment practices. These practices include recruitment, recruitment advertising, hiring, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation, use of facilities, and other terms and conditions of employment.

(b) *Employee selection procedures.* The Equal Employment Opportunity Commission, in carrying out its responsibilities in ensuring compliance with title VII of the Civil Rights Act of 1964, has published Guidelines on Employee Selection Procedures (29 CFR Part 1607) to assist in establishing and maintaining equal employment opportunities. Among other things, these Guidelines forbid the use of employee selection practices, procedures, and devices (such as tests, minimum educational levels, and the like) which disqualify a disproportionate number of minority individuals or women for employment and which are not related to job performance. Recipient governments using selection procedures which are not in conformity with the EEOC Guidelines shall, upon request of the Secretary, set forth the reasons for any such noconformity, and, if necessary, the actions the recipient government is taking or will take to assure that its selection procedures are job related.

(c) *Self-evaluation.* Recipient governments are expected to conduct a continuing program of self-evaluation to ascertain whether any of their recruitment, employee selection, or promotional policies (or lack thereof) directly or indirectly have the effect of denying equal employment opportunities to minority individuals or women.

(d) *Employment compliance reviews.* Compliance reviews of recipient governments will be scheduled by the Office of Revenue Sharing, giving priority to any recipient government programs funded with entitlement funds which show a significant disparity between the percentage of minority persons or women in the work force and the percentage of minority or women employees in the applicable programs.

§ 51.54 Sex discrimination.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in recruitment, hiring, or employment, whether full-time or part-time, under any program or activity funded in whole or in part with entitlement funds.

(b) *Recruitment and advertisement.* (1) Recipient governments engaged in recruiting activity must recruit employees of both sexes for all jobs.

(2) Advertisement in newspapers and other media for employment must not express a sex preference. The placement of an advertisement in columns headed "Male" or "Female" will be considered to be a discriminatory limitation.

(3) A recipient government shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such recruitment has the effect of discriminating on the basis of sex.

(c) *Job policies and practices.* (1) Employees of both sexes shall have an equal opportunity to any available job that he or she is qualified to perform.

(2) Recipient governments must not make any distinction based upon sex in employment opportunities, wages, hours or other conditions of employment. It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex. It shall be an unlawful employment practice for an employer to provide for both unequal benefits and unequal contributions in the areas of insurance, pension or retirement plans, welfare or other fringe benefits programs. Further, it shall be an unlawful employment practice for an employer to provide for either unequal benefits or unequal contributions in such areas unless such unequal benefits or unequal contributions are directly related to actuarial differences. Proof of such actuarial differences shall be provided by the recipient government upon the request of the Secretary. In the areas of insurance, pensions, welfare programs and other fringe benefits, it shall be an unlawful employment practice for a recipient government to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees, which are not made available for male employees.

(3) Any distinction between married males and married females and any distinction between unmarried males and unmarried females will be considered to be a distinction made on the basis of sex. Similarly, a recipient government must not deny employment to women with young children unless it has the same exclusionary policies for men; or terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to persons of the opposite sex.

(4) A recipient government may not refuse to hire men or women, or deny men or women a particular job because there are no separate restrooms or other separate facilities. The recipient government's policies and practices must assure that appropriate facilities are available for use by both sexes.

(5) Recipient governments may not deny any employee the right to any job, which the employee is qualified to perform, in reliance upon a State "protective" law that does not apply equally to both sexes.

(6) A recipient government shall not:

(i) Classify a job as being for males or for females.

(ii) Maintain or establish separate lines of progression, seniority lists, career ladders, tenure, systems, position descriptions or job requirements which are based on sex or which classify persons on the basis of sex.

(d) *Marital or parental status.* In any program or activity funded in whole or in part with entitlement funds:

(1) *Family status.* A recipient government shall not treat an employee or applicant for employment differently on the basis of sex in any employment action or policy because of the employee's or applicant's marital status or status as a parent. Such action may also not be taken with respect to pregnancy unless the recipient government can demonstrate that the pregnancy of the individual concerned prevents adequate job performance by that individual. In no event may a recipient government have a policy or take an action which benefits a person because of his or her status as head of household or principal family wage earner.

(2) *Pregnancy as a temporary disability.* A recipient government shall treat any temporary disability arising from pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom in the same manner as it treats any other temporary disability for all job related purposes. The term "job related purposes" includes commencement, duration and extensions of leave, payment of disability income, reinstatement or termination of employment, reinstatement pay rate and position, fringe benefits, accrual of seniority or other benefit of service, and promotion.

(e) *Sex as a bona fide occupational qualification.* Nothing in these regulations shall prohibit the hiring of employees of one sex if sex is a bona fide occupational qualification. A bona fide occupational qualification is only allowed where there is a reasonable factual basis to believe that all, or substantially all, of one sex are unable to perform the job in question. Further, the burden of demonstrating that sex is a bona fide occupational qualification for a given job rests on the recipient government.

§ 51.55 Assurances required.

(a) *General.* In order to qualify for any payment for any entitlement period, each Governor of a State or each chief executive officer of a unit of local government shall, prior to the beginning of each entitlement period, execute to the satisfaction of the Secretary an assurance that all programs to be funded in whole or in part with entitlement funds will be conducted in compliance with the requirements of this subpart. Assurances required under this paragraph shall be submitted pursuant to § 51.10(b) and shall be in such form and detail as prescribed by the Secretary.

(b) *Failure to comply.* Any recipient government which fails to comply with paragraph (a) of this section shall have its entitlement payments withheld for the applicable entitlement period. Any recipient government to which a determination of noncompliance with paragraph (a) of this section has been made shall be entitled to notice and opportunity for hearing. However, notwithstanding § 51.59, no payments shall be made for the applicable entitlement period pending the outcome of such hearing.

§ 51.56 Compliance information and reports.

(a) *Access to sources of information.* Each recipient government shall permit access by authorized representatives of the Office of Revenue Sharing and Department of Justice during normal business hours to such of its facilities, books, records, accounts, personnel, and other sources of information as may be relevant to a determination of whether the recipient government is complying with this subpart. Where any information required of a recipient government is in the exclusive possession of any other agency, institution, or person, and such agency, institution, or person fails or refuses to furnish this information, the recipient government shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(b) *Compliance reports.* Each recipient government shall keep such records and submit on request of the Secretary timely, complete and accurate compliance reports at such times, in such form, and containing such information, as the Secretary may determine to be necessary or useful to enable the Office of Revenue Sharing to ascertain whether the recipient government has complied or is complying with this subpart. Recipient governments shall make available on request of Office of Revenue Sharing officials, racial, ethnic, male/female, and national origin data showing the extent to which minorities and females are or will be beneficiaries of entitlement funds. In the case of any program under which a primary recipient government extends or will extend entitlement funds to any other secondary recipient, such secondary recipient shall submit such compliance reports to the primary recipient as may be necessary or useful to enable the primary recipient to carry out its obligations as a recipient government under this subpart. Each recipient government shall identify, on request of the Office of Revenue Sharing, any State or local agency which has been legally authorized to monitor its civil rights compliance activities.

§ 51.57 Complaints and investigations.

(a) *Complaints.* Any person who believes anyone has been subjected to discrimination prohibited by this subpart, may personally or by a representative file with the Secretary a written statement setting forth the nature of the discrimination alleged and the facts upon which the allegation is based. No representative of a recipient government nor any of its agencies shall intimidate, threaten, coerce, or discriminate against any person or class of persons because of testimony, assistance, or participation in an investigation, proceeding, or hearing under this subpart.

(b) *Investigations.* The Secretary shall advise the chief executive officer of the recipient government of any complaint received pursuant to paragraph (a). If the Secretary has reason to believe that the complaint shows that a recipient government has failed to comply with the provisions of this subpart, he will cause a prompt investigation to be made by the Office of Revenue Sharing, or other appropriate Federal or State agency, of the program or activity concerned. Such investigation may be made, if necessary, with the assistance of complainants or of the recipient government.

§ 51.58 Compliance reviews and affirmative action.

(a) *Compliance reviews.* The Secretary shall monitor and determine compliance of recipient governments with the requirements of this subpart and of the Act. Compliance reviews will be undertaken from time to time, as appropriate, at the discretion of the Secretary.

(b) *Affirmative action.* Any recipient government which has been determined to be in violation of this subpart must take reasonable steps to remove or overcome the consequences of such discrimination where a practice or usage has in purpose or effect tended to exclude individuals from participation in, deny them the benefits of, or subject them to discrimination under any program or activity to which this subpart applies, on the ground of race, color, national origin, or sex. The Secretary will, upon a finding of noncompliance, determine the steps necessary to remove the noncompliance and will determine a timetable for implementing those steps.

§ 51.59 Procedure for effecting compliance.

(a) *General.* Whenever the Secretary determines that a recipient government has failed to comply with this subpart, he shall notify the chief executive officer of the recipient government and the Governor of the State in which the government is located of the noncompliance and shall request the Governor to secure compliance. If, within a reasonable period of time not to exceed 60 days, the Governor fails or refuses to secure compliance, the Secretary is authorized:

(1) To refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted;

(2) To initiate an administrative hearing pursuant to the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 200d); or

(3) To take such other action as may be provided by law.

(b) *Administrative hearing.* An order of an administrative law judge to withhold temporarily, to repay, or to forfeit entitlement funds will not become effective until:

(1) There has been an express finding on the record, after notice and opportunity for hearing, of a failure to comply with a requirement of this subpart.

(2) At least 10 days have elepsed from the date of the order of the administrative law judge. During this period additional efforts will be made to assist the recipient government to comply with this subpart and to take appropriate corrective action.

(3) Thirty days have elapsed after the Secretary has filed with the Committee on Government Operations of the House of Representatives and the Committee on Finance of the Senate a full written report of the circumstances and the grounds for such action. The time limitation of subparagraphs (2) and (3) can run concurrently.

(4) The Secretary has notified the recipient government that, in addition to whatever sanctions have been imposed by the administrative law judge, the Office of Revenue Sharing shall withhold payment of all entitlement funds until such time as the recipient government complies with the order of the administrative law judge. Further, the amount of the forfeiture or repayment of entitlement funds, if any, will be limited to the program or activity in which the noncompliance has been found. Such funds shall be collected by a downward adjustment to future entitlement payments and will be deposited in the general fund of the Treasury. If the Secretary determines that adjustment to future entitlement payments is impracticable, he may refer the matter to the Attorney General for appropriate civil action to require payment of such amount to the United States.

(c) *Withholding pursuant to court action.* The Secretary may immediately withhold the payment of entitlement funds to a recipient government pending the entry of an affirmative action order by a Federal court if:

(1) A violation of the nondiscrimination provision of this subpart or the Act (Sec. 122) was alleged in the complaint before the court;

(2) The court finds that the recipient government has violated the nondiscrimination provision of this subpart or the Act; and

(3) The question of withholding has not been resolved by the court.

(d) *Action by Attorney General.* Nothing in these regulations is intended to preclude the United States, in a civil action initiated by the Attorney General of the United States pursuant to § 122 (c) of the Act, from seeking, or a court from granting, an order to require the repayment of funds previously paid under the Act, or an order that the payment of funds under the Act be terminated or withheld. In addition, the Secretary may initiate the procedure provided for in paragraph (a)(2) of this section against a recipient government which has been named as a defendant in such civil action if it is the Secretary's judgment, after consultation with the Attorney General, that an administrative withholding of entitlement funds is an appropriate measure to ensure compliance with this subpart.

§ 51.60 Hearing procedures.

Whenever a procedure which requires notice and opportunity for a hearing is invoked by the Secretary to effect compliance under this subpart, the procedural regulations promulgated in subpart G of this part shall govern.

§ 51.61 Jurisdiction over property.

The Office of Revenue Sharing shall have jurisdiction over any program or activity for purposes of this subpart for as long as a recipient government retains ownership or possession of any real or personal property or any interest therein, which was purchased in whole or in part with entitlement funds for the applicable program or activity. Further, if such property is transferred to another party, the Office of Revenue Sharing will retain jurisdiction over the recipient government for purposes of this subpart for as long as the property is used to provide benefits similar to those which were provided by the property before the transfer.

§ 51.62 Delegation.

The Secretary may assign to officials of the Department, officials of other departments or agencies of the Federal government, or officials of State agencies, responsibilities and authority to effectuate the purposes of this section including the achievement of effective coordination within the executive branch in the implementation of Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 2000e). Such delegation shall be made only with the consent of the affected departments and agencies, and in no event will the Secretary delegate authority to review the initial decision of an administrative law judge to officials outside the Department.

[FR Doc.75-28768 Filed 10-22-75;11:04 am]

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 446-5]

PART 52—APPROVAL AND PROMULGATION OF STATE IMPLEMENTATION PLANS

Indiana—Approval of Plan Revisions

Pursuant to section 110 of the Clean Air Act, the State of Indiana submitted to the Administrator of the United States Environmental Protection Agency an implementation plan on January 31, 1972 to achieve the National Ambient Air Quality Standards. The plan was approved by the Administrator on May 31, 1972 (37 FR 10842) with several exceptions. Subsequent to the May 31, 1972 action, the State submitted amended sulfur dioxide, hydrocarbon, and carbon monoxide regulations for stationary sources which the Administrator approved on May 14, 1973 (38 FR 12698).

Recently, the Indiana Air Pollution Control Board after public notice and hearing adopted revisions to regulations APC-13, APC-15, APC-16, and APC-17, and adopted new regulations APC-18, APC-20, and APC-22. On March 7, 1974, the Technical Secretary of the Air Pollution Control Board (APCB), acting for the Governor of Indiana, submitted to the Regional Administrator new regulations APC-18 and APC-20. On October 3, 1974 the Technical Secretary submitted revised regulations APC-16, APC-17, and new regulation APC-22. On November 8, 1974, the Technical Secretary submitted revised regulations APC-3 and APC-15, and on December 5, 1974, submitted a revised APC-13. With the revised regulations, the State submitted a technical support document describing the rationale for the changes to the regulations.

On May 2, 1975 the Regional Administrator of the U.S. EPA, Region V, published for public comment these proposed revisions to the regulations contained in the Indiana State Implementation Plan (SIP). The regulatory changes affect the control of five criteria pollutants: total suspended particulates, sulfur dioxide, hydrocarbons, nitrogen oxides, and carbon monoxide. Regulations establishing timetables for particulate control (APC-18) and controlling fugitive dust (APC-20) were included in the notice. Most significant, however, was a regulation (APC-22) which classifies counties within Indiana according to the need for control of emissions from sources located in each county, in fact, a wholesale revision of the applicable control strategy for all pollutants.

In the rulemaking proposal, eleven counties in Indiana were singled out for being unacceptably classified by APC-22 for purposes of sulfur dioxide controls set forth in APC-13, based on EPA's preliminary review of the State's technical support document. The EPA review of the technical support document supporting the proposed rulemaking indicated than an "A" Classification for those counties might be more appropriate. Public utility companies have submitted air quality, emission and meterological data to demonstrate that a "C" classification would be appropriate in most counties. As a result of a meeting between EPA and State officials, the State has undertaken a reassessment of the APC-22 classifications for the eleven counties based on a Federally approved methodology involving use of computerized dispersion modelling in which sources are examined for their impact on air quality. This work is currently under review in conjunction with other submitted data, by the regional office and final rulemaking action on APC-13 and pertinent portions of APC-22 will take place shortly.

This notice finalizes action on APC-3, APC-16, APC-17, APC-18, APC-20, and APC-22, insofar as it classifies counties for purposes of controlling total suspended particulates, carbon monoxide, and nitrogen dioxide. Final action on APC-13, APC-15, and the APC-22 classification of counties for sulfur dioxide and hydrocarbon control will be forthcoming.

New APC-3, the visible emissions regulation, varies from the approved regulation in several respects, the most significant of which is the introduction of a 15-minute exemption period in each 24-hour period. The power companies submitted comments to the effect that such an exemption is necessary for them when starting fires or cleaning units. Since sections 2(a) and 2(b) of APC-3 already provide an exemption to visible emission requirements for fuel-burning sources in such circumstances, this comment appears to be superfluous. Generally, visible emission regulations correspond to the surveillance requirement set forth at 40 CFR 51.19(c) and section 3 of APC-3 indicates that such was the intent of Indiana. However, certain intermittent sources, such as coke batteries and roof monitors, may cause gross visible emissions and remain within the exempted time limits. For such sources at least, APC-3 would be ineffective and impractical as a surveillance technique if indeed it could be deemed available. Such being the case, it is incumbent upon the State to demonstrate that failure of intermittent sources to comply with APC-3 during the exempted time period would not result in an interference with attainment and maintenance of the standards [40 CFR 51.13(e)(1)]. The State has failed to present such a demonstration. Accordingly, APC-3 must be disapproved to the extent that the 15-minute exemption provision in section 1 fails to meet the requirements of §§ 51.13 (e)(1) and 51.19(c). It should also be noted that EPA will not regard itself as bound by exemptions granted by the Board pursuant to section 2(c). Such exemptions must be considered on a case by case basis for impact on attainment and maintenance of the standards.

Other comments from industry and the utilities criticized APC-3 for vagueness and generally conveyed a need for clarification of terms. EPA is concerned about the confusion caused by the regulation but believes most difficulties can be resolved by administrative resolution. Such resolutions to the extent that EPA considers them substantive changes would need to be reviewed by EPA for consistency with the implementation plan before becoming effective.

New APC-16, control of carbon monoxide (CO) emissions from stationary sources, in conjunction with the classification of counties in APC-22 for purposes of CO control, effectively removes all existing stationary sources of CO from the applicable control strategy. A review of the last several years of air quality data showed few violations of the standards. The small number of stationary CO sources in Indiana and the fact that the bulk of CO emissions are mobile source initiated are reasons for EPA's approval of this strategy revision. APC-16 will require control of new stationary CO sources to assist in maintenance of the standards.

New APC-17, control of nitrogen dioxide (NO_2) emissions from stationary sources, in conjunction with the classification of counties in APC-22 for purposes of NO_2 control, effectively removes all stationary sources of NO_2 from the applicable control strategy. EPA's reclassification of AQCR's placed all but the Indiana portion of the major metropolitan Chicago AQCR in attainment status (39 FR 16344, May 8, 1974). The available air quality data in the Northwest Indiana Area indicates no standard violations. Accordingly, EPA will approve this strategy revision. APC-17 will require control of new stationary NO_2 sources to assist in maintaining the standard, and in reference to fossil fuel generators is consistent with Federal New Source Performance Standards for emissions of nitrogen dioxide (40 CFR Part 60.44).

APC-18 represents a series of compliance schedules affecting the various sources of particulate matter. In all cases, the final compliance date was on or before May 31, 1975. Since approval of APC-18 at this late date would be purely academic, EPA will request the State to withdraw the regulation as a plan revision in accordance with comments submitted by the Technical Secretary of the APCB.

APC-20 addresses the control of fugitive dust emissions. Comments received from industry indicated a general dissatisfaction with the regulation because of vagueness and unenforceability. While EPA recognizes the desirability of including a fugitive dust emission limitation in an air quality implementation plan, the State has been advised of our reservations concerning the inclusion of a vague or ambiguous regulation in the Indiana Implementation plan. State officials have indicated a willingness to clarify the ambiguities. In the interim EPA will approve APC-20 with the exception of section 2(d) relating to visible emission violations. State personnel have indicated that no person has ever been cited for violation solely of section 2(d). Accordingly, EPA will disapprove section 2(d) of APC-20 as unenforceable. This rulemaking will be effective immediately because no additional substantive requirements are imposed on parties.

APC-22 classifies all counties in the State as A, B, or C for each criteria pollutant. While EPA is not satisfied with the State's technical support of classifications for CO and NO_2, the priority county ratings for these two pollutants will be approved for reasons discussed above. Classifications for particulate, however, are unsupportable for the following reasons:

(1) Data to support the regulation is inadequate;

(2) Attainment of the National Ambient Air Quality Standards has not been addressed;

(3) Maintenance of the National Ambient Air Quality Standards has not been addressed.

Thus, this classification fails to meet the requirements of 40 CFR 51.3 and accordingly is disapproved.

Final rulemaking action on the ozone and sulfur dioxide county classifications will take place at the same time as actions on APC-15 and APC-13.

With the exception of the above-noted disapproval actions and material returned to the State or held in abeyance pending further review, the proposed revisions meet the substantive and procedural requirements of Section 110 of the Clean Air Act and 40 CFR Part 51 and are hereby approved as revisions to the Indiana Implementation Plan, effective immediately.

A technical support document discussing the background for the decisions noted above is available for inspection in the Region V office of the U.S. Envrionmental Protection Agency, 230 South Dearborn, Chicago, Illinois 60604, and the Indiana State Air Pollution Control Board, State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

(42 USC 1857c-5(a))

Dated: October 21, 1975.

JOHN QUARLES,
Acting Administrator.

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

1. Section 52.770 is amended by adding paragraph (d)(2) as follows:

§ 52.770 Identification of plan.

* * * * *

(d) * * *

(2) March 7, 1974, October 3, 1974 and November 8, 1974 the Technical Secretary of the Air Pollution Control Board acting for the Governor of Indiana.

2. Section 52.771 is amended by adding paragraph (b) as follows (the existing unlettered paragraph becomes paragraph (a)):

§ 52.771 Classification of regions.

* * * * *

(b) The requirements of 51.3(a) of this chapter are not met by the classification of counties in APC-22 for the purposes of attainment and maintenance of the total suspended particulate ambient air quality standards.

3. Section 52.776 is amended by adding paragraph (c) as follows:

§ 52.776 Control strategy. Particulate matter.

* * * * *

(c) APC-3 of Indiana's Air Pollution Control Regulations (visible emission limitation) is disapproved insofar as the phrase "for more than a cumulative total of 15 minutes in a 24-hour period" will interfere with attainment and maintenance of particulate standards.

4. Section 52.781 is amended by adding paragraph (e) as follows:

§ 52.781 Rules and regulations.

* * * * *

(e) Section 2(d) of APC-20, Fugitive Dust Emissions, is disapproved because it is unenforceable within the terms of the regulation.

5. Section 52.792 is added as follows:

§ 52.792 Source surveillance.

(a) The requirements of 51.19(c) of this chapter are not met by the phrase "for more than a cumulative total of 15 minutes in a 24-hour period" contained in Section 1 of APC-3 of the Indiana Air Pollution Control Regulations.

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