

3781, 3786, paragraph (t) of § 0.76 of Title 28, Code of Federal Regulations, is revised to read as follows:

§ 0.76 Specific functions.

(t) Providing for auditing and investigative services for the Department's contracts, cooperative agreements, grants, and, where appropriate, subcontracts, subgrants and contracts under grants.

Dated: April 10, 1981.

William French Smith,
Attorney General.

[FR Doc. 81-11716 Filed 4-16-81; 8:45 am]

BILLING CODE 4410-01-M

Attorney General

28 CFR Part 16

[AAG/A Order No. 63-81]

Production or Disclosure of Material or Information; Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Federal Bureau of Investigation is amending its Privacy Act regulations by revoking an exemption for the National Crime Information Center (Justice/FBI-001) system.

DATES: This rule will be effective April 17, 1981.

ADDRESSES: Administrative Counsel, Justice Management Division, Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: William J. Snider (202-633-3452).

SUPPLEMENTARY INFORMATION: This rule is exempt from the application of E.O. No. 12291 pursuant to section 1(a)(3) thereof. As explained in the Notice Section of today's Federal Register, the Federal Bureau of Investigation (FBI) proposes to modify its system of records entitled National Crime Information Center (NCIC) (JUSTICE/FBI-001). This rule, amends 28 CFR 16.96 by revoking the exemption of this system from subsection (m) of the Privacy Act.

Since revocation of this exemption would be in the public interest, it has been determined that it is impracticable and unnecessary to provide opportunity for public comment and that it is contrary to the public interest to delay the effective date of this rule. This determination is made in accordance with 5 U.S.C. 553(b)(B).

Accordingly, pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793-78, 28 CFR 16.96 is hereby amended by revising paragraph (g) and removing paragraph (h)(6). Paragraph (g) as revised, is published below.

Dated: February 6, 1981.

Kevin D. Rooney,
Assistant Attorney General for
Administration.

§ 16.96 of Title 28 of the Code of Federal Regulations is amended by revising paragraph (g) and removing paragraph (h)(6):

§ 16.96 Exemption of Federal Bureau of Investigation Systems—Limited access.

(g) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(8), (f) and (g): National Crime Information Center (NCIC) (JUSTICE/FBI-001). This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j).

[FR Doc. 81-11543 Filed 4-16-81; 8:45 am]

BILLING CODE 4410-02-M

28 CFR Part 59

[Order No. 942-81]

Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: As required by Title II of the Privacy Protection Act of 1980 (Pub. L. 96-440, Sec. 201 *et seq.*; 42 U.S.C. 2000aa-11, *et seq.*), these guidelines will govern the methods used by all federal officers and employees to obtain documentary materials in the possession of persons who are neither suspects in an offense, nor closely related to such suspects. The primary purpose of these guidelines is to limit the use of search warrants to obtain documentary materials held by third parties when less intrusive but equally effective means of obtaining such materials exist.

EFFECTIVE DATE: May 18, 1981.

FOR FURTHER INFORMATION CONTACT: Mary Ellen Warlow, Criminal Division, United States Department of Justice, Room 2244a Main Justice, Washington, D.C. 20530, (202) 633-4528.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 1302-1304 of the Federal Register of January 6, 1981, and comments were

invited for 30 days ending February 5, 1981. Comments were received from 9 sources, including associations of health and mental health care professionals, a press association, a business, an individual, the Attorney General's Office of the State of California, and the General Counsel of the Department of the Treasury. In addition, comments and suggestions were received from various components of the Department of Justice. The following summarizes the comments, suggestions and actions taken.

Approval Authority

The Department of the Treasury suggested that the requirement that all warrant applications for searches that might involve intrusions into recognized professional, confidential relationships be approved by a high-ranking Department of Justice official was not required under the Privacy Protection Act of 1980 (hereinafter cited as the "Act") and was unduly burdensome. Although it is correct that the Act does not require that the guidelines include such a provision, this requirement is incorporated as a means of evidencing special concern for the privacy interests that may be implicated in such a search. This requirement should not be overly burdensome, since it is anticipated that the number of such search warrant applications will be relatively small. In addition, centralizing this approval authority will facilitate collection of information on this category of searches which must be included in the annual Attorney General's report required under section 202 of the Act.

Criminal Tax Offenses

The Tax Division of the Department of Justice noted that established policy requires that any search for evidence of a criminal tax offense must be approved by the Tax Division. A footnote has been added to § 59.4 of the guidelines to make it clear that this policy is to continue.

Doctor-Like Therapeutic Relationships

Several comments were received that suggested that § 59.4(b)(5) of the proposed guidelines did not afford professionals involved in doctor-like therapeutic relationships the same degree of protection as that afforded third party physicians, attorneys, and clergymen under § 59.4(b)(1) of the proposed guidelines. Section 59.4(b)(5) of the proposed guidelines simply recognized that it is impossible to identify with absolute certainty all professional confidential relationships that are analogous to those which exist

between doctor and patient.

Accordingly, this section of the guidelines required that the United States Attorney examine the facts and circumstances of the case and determine whether privacy interests similar to those existing in a doctor-patient relationship would be implicated if a search were executed. If such a finding is made, then the same standards and procedures as those applicable to a search involving a third party physician are to be applied. Thus the guidelines do not afford a lesser degree of protection to these other doctor-like therapeutic relationships.

Non-Applicability

The Treasury Department urged that it be made clear that guidelines do not apply to border searches. The Office of Intelligence Policy and Review of the Department of Justice made a similar suggestion with respect to foreign intelligence or counterintelligence activities. It is the view of the Department of Justice that neither of these activities would be governed by the guidelines since the Act provides that the guidelines are to control methods used to obtain documents "in connection with the investigation or prosecution of an offense." Neither border searches nor foreign counterintelligence activities fall within this category. However, to resolve any ambiguity, the guidelines have been changed to reflect these concerns.

Audits and Inspections

It was suggested that § 59.3(b)(2) of the guidelines, which provides that the guidelines are not to be applicable to audits, examinations, or regulatory or compliance inspections pursuant to a federal statute or the terms of a federal contract, would expand such inspection or audit authority. The guidelines in no way expand such current authority. It was also suggested that certain regulatory inspections are described as "administrative searches" and that therefore this section of the guidelines should be amended to contain a reference to this term as well. Section 59.3(b)(2) has been changed accordingly.

Sanctions

It was suggested that civil penalties be available for violations of the guidelines and that any evidence obtained in violation of the guidelines be inadmissible as evidence. Application of either of these suggested sanctions is prohibited by section 202 of the Act.

Mental Health Records

It was suggested that certain mental health records be absolutely exempt from disclosure to law enforcement authorities. The Act does not require inclusion of such a requirement, no such absolute privilege is recognized in federal criminal law, and its inclusion in these guidelines would be unduly restrictive.

Title I of the Act

It was suggested that the guidelines be amended to make it absolutely clear that Title I of the Act controls the use of search and seizure to obtain documents which are held for the purposes of public communication. Section 59.3(c) of the guidelines has been changed accordingly.

United States Attorney Functions

Attorneys within the Department of Justice pointed out that although the proposed guidelines referred to certain functions to be performed by the United States Attorneys, certain cases are handled by components of the Divisions of the Department of Justice and not by the United States Attorneys' Offices. Therefore, the guidelines have been amended to make it clear that where a case is not being handled by a United States Attorney's Office, the functions of the United States Attorney, with respect to these guidelines, may be exercised by another appropriate supervisory official of the Department of Justice. The term "supervisory official of the Department of Justice" is defined in § 59.2(e).

Other Statutory Limitations

A concern was raised that the guidelines might be misinterpreted as superseding existing statutory limitations which govern access to, use of, and disclosure of, certain types of records. A new § 59.3(d) has been added to make it clear that this is not the case.

Availability of Subpoenas

Comments from within the Department of Justice noted that subpoenas may not be available throughout the course of an investigation, as is the case, for example, after indictment. Therefore, it was suggested that the availability of a legally enforceable form of process should be listed among the considerations having a bearing on the appropriateness of using a search warrant. This would be a consideration in borderline cases in which reliance on a subpoena or other form of legally enforceable process would not create an intolerable risk of compromising the availability or usefulness of the materials, but reliance on an informal

request may not be prudent. Therefore, a new § 59.4(c)(2)(iv) has been added to incorporate this suggestion.

Interest in Preventing Disclosure

It was suggested that it was improper to provide that the third party's interest in preventing disclosure to the government could be a factor considered in assessing whether use of a search warrant would be appropriate. The rationale expressed was that a physician or psychiatrist would always seek to prevent disclosure of confidential information concerning his patients. However, the guidelines address only interests in improperly preventing disclosure, for example by altering, concealing, or destroying the materials. Furthermore, § 59.4(c) of the guidelines specifically provides that the fact that a third party may seek to assert a privilege or raise other grounds to challenge a subpoena is not a sufficient basis for the use of a search warrant.

Hospital and Clinic Records

It was suggested that information furnished or developed in a doctor-patient relationship but placed by the doctor in the custody of a hospital or clinic would not be regarded as being in the "private possession" of the physician, and thus would not be governed by § 59.4(b) of the guidelines. This result was not intended. A footnote has been added to § 59.4(b)(1) to clarify this point.

Physician's Notes

Inasmuch as § 59.4(b) of the proposed guidelines referred to confidential information "furnished" for the purposes of professional treatment or counseling, it was suggested that a physician's notes or other confidential information developed on a patient or client would not be included in this reference. The guidelines have been revised to refer to information "furnished or developed" for purposes of professional counseling or treatment.

Notice and Consent

It was suggested that the notice to and the consent of the subject of medical records be requirements incorporated in the guidelines. The Act does not require such provisions, and the suggested changes would be burdensome on effective law enforcement. Furthermore, such provisions were the subject of medical records privacy legislation that was before the 96th Congress. It is not the purpose of these guidelines to incorporate segments of that proposed legislation.

Relevance of Documents

It was suggested that the guidelines incorporate a requirement that materials sought by search warrant be relevant to the offense being investigated. Such relevance is already required under the Fourth Amendment (see also, Rule 41 of the Federal Rules of Criminal Procedure) and need not be reiterated here.

Functions of the Deputy Assistant Attorneys General

The proposed guidelines required that certain functions be performed by the "Attorney General or his designee." The "designee" could be any Department of Justice official at the level of Deputy Assistant Attorney General or above. It was contemplated that these functions would be routinely performed by the appropriate Deputy Assistant Attorneys General. However, the proposed guidelines would have required the issuance of specific delegation orders. In order to avoid the necessity of this additional process, the guidelines have been changed so that the Deputy Assistant Attorneys General may exercise these functions without a specific delegation of authority. However, a new section 59.5 has been added to make it clear that any of the functions or authorities of the Deputy Assistant Attorneys General may be exercised by a higher level official.

Regulatory Analysis: Not required for this rulemaking.

For the reasons set out in the preamble and under the authority given the Attorney General under section 201 of the Privacy Protection Act of 1980 (Sec. 201, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa-11)), Title 28 of the *Code of Federal Regulations* is amended by adding a new Part 59 to read as follows:

PART 59—GUIDELINES ON METHODS OF OBTAINING DOCUMENTARY MATERIALS HELD BY THIRD PARTIES

Sec.

59.1 Introduction.

59.2 Definitions.

59.3 Applicability.

59.4 Procedures.

59.5 Functions and authorities of the Deputy Assistant Attorneys General.

59.6 Sanctions.

Authority: Sec. 201, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa-11).

§ 59.1 Introduction.

(a) A search for documentary materials necessarily involves intrusions into personal privacy. First, the privacy of a person's home or office may be breached. Second, the execution of such a search may require examination of private papers within the scope of the search warrant, but not

themselves subject to seizure. In addition, where such a search involves intrusions into professional, confidential relationships, the privacy interests of other persons are also implicated.

(b) It is the responsibility of federal officers and employees to recognize the importance of these personal privacy interests, and to protect against unnecessary intrusions. Generally, when documentary materials are held by a disinterested third party, a subpoena, administrative summons, or governmental request will be an effective alternative to the use of a search warrant and will be considerably less intrusive. The purpose of the guidelines set forth in this part is to assure that federal officers and employees do not use search and seizure to obtain documentary materials in the possession of disinterested third parties unless reliance on alternative means would substantially jeopardize their availability (e.g., by creating a risk of destruction, etc.) or usefulness (e.g., by detrimentally delaying the investigation, destroying a chain of custody, etc.). Therefore, the guidelines in this part establish certain criteria and procedural requirements which must be met before a search warrant may be used to obtain documentary materials held by disinterested third parties. The guidelines in this part are not intended to inhibit the use of less intrusive means of obtaining documentary materials such as the use of a subpoena, summons, or formal or informal request.

§ 59.2 Definitions.

As used in this part—

(a) The term "attorney for the government" shall have the same meaning as is given that term in Rule 54(c) of the Federal Rules of Criminal Procedure;

(b) The term "disinterested third party" means a person or organization not reasonably believed to be—

(1) A suspect in the criminal offense to which the materials sought under these guidelines relate; or

(2) Related by blood or marriage to such a suspect;

(c) The term "documentary materials" means any materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, films or negatives, audio or video tapes, or materials upon which information is electronically or magnetically recorded, but does not include materials which constitute contraband, the fruits or instrumentalities of a crime, or things otherwise criminally possessed;

(d) The term "law enforcement officer" shall have the same meaning as

the term "federal law enforcement officer" as defined in Rule 41(h) of the Federal Rules of Criminal Procedure; and

(e) The term "supervisory official of the Department of Justice" means the supervising attorney for the section, office, or branch within the Department of Justice which is responsible for the investigation or prosecution of the offense at issue, or any of his superiors.

§ 59.3 Applicability

(a) The guidelines set forth in this part apply, pursuant to section 201 of the Privacy Protection Act of 1980 (Sec. 201, Pub. L. 96-440, 94 Stat. 1879, (42 U.S.C. 2000aa-11)), to the procedures used by any federal officer or employee, in connection with the investigation or prosecution of a criminal offense, to obtain documentary materials in the private possession of a disinterested third party.

(b) The guidelines set forth in this part do not apply to:

(1) Audits, examinations, or regulatory, compliance, or administrative inspections or searches pursuant to federal statute or the terms of a federal contract;

(2) The conduct of foreign intelligence or counterintelligence activities by a government authority pursuant to otherwise applicable law;

(3) The conduct, pursuant to otherwise applicable law, of searches and seizures at the borders of, or at international points of entry into, the United States in order to enforce the customs laws of the United States;

(4) Governmental access to documentary materials for which valid consent has been obtained; or

(5) Methods of obtaining documentary materials whose location is known but which have been abandoned or which cannot be obtained through subpoena or request because they are in the possession of a person whose identity is unknown and cannot with reasonable effort be ascertained.

(c) The use of search and seizure to obtain documentary materials which are believed to be possessed for the purpose of disseminating to the public a book, newspaper, broadcast, or other form of public communication is subject to Title I of the Privacy Protection Act of 1980 (Sec. 101, *et seq.*, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa, *et seq.*)), which strictly prohibits the use of search and seizure to obtain such materials except under specified circumstances.

(d) These guidelines are not intended to supersede any other statutory, regulatory, or policy limitations on access to, or the use or disclosure of

particular types of documentary materials, including, but not limited to, the provisions of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401, *et seq.*), the Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1101, *et seq.*), and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended (42 U.S.C. 4541, *et seq.*).

§ 59.4 Procedures.¹

(a) *Provisions governing the use of search warrants generally.*

(1) A search warrant should not be used to obtain documentary materials believed to be in the private possession of a disinterested third party unless it appears that the use of a subpoena, summons, request, or other less intrusive alternative means of obtaining the materials would substantially jeopardize the availability or usefulness of the materials sought, and the application for the warrant has been authorized as provided in paragraph (a)(2) of this section.

(2) No federal officer or employee shall apply for a warrant to search for and seize documentary materials believed to be in the private possession of a disinterested third party unless the application for the warrant has been authorized by an attorney for the government. Provided, however, that in an emergency situation in which the immediacy of the need to seize the materials does not permit an opportunity to secure the authorization of an attorney for the government, the application may be authorized by a supervisory law enforcement officer in the applicant's department or agency, if the appropriate United States Attorney (or where the case is not being handled by a United States Attorney's Office, the appropriate supervisory official of the Department of Justice) is notified of the authorization and the basis for justifying such authorization under this part within 24 hours of the authorization.

(b) *Provisions governing the use of search warrants which may intrude upon professional, confidential relationships.*

(1) A search warrant should not be used to obtain documentary materials believed to be in the private possession of a disinterested third party physician, lawyer, or clergyman, under

circumstances in which the materials sought, or other materials likely to be reviewed during the execution of the warrant, contain confidential information on patients, clients, or parishioners which was furnished or developed for the purposes of professional counseling or treatment, unless—

(i) It appears that the use of a subpoena, summons, request or other less intrusive alternative means of obtaining the materials would substantially jeopardize the availability or usefulness of the materials sought;

(ii) Access to the documentary materials appears to be of substantial importance to the investigation or prosecution for which they are sought; and

(iii) The application for the warrant has been approved as provided in paragraph (b)(2) of this section.

(2) No federal officer or employee shall apply for a warrant to search for and seize documentary materials believed to be in the private possession of a disinterested third party physician, lawyer, or clergyman under the circumstances described in paragraph (b)(1) of this section, unless, upon the recommendation of the United States Attorney (or where a case is not being handled by a United States Attorney's Office, upon the recommendation of the appropriate supervisory official of the Department of Justice), an appropriate Deputy Assistant Attorney General has authorized the application for the warrant. Provided, however, that in an emergency situation in which the immediacy of the need to seize the materials does not permit an opportunity to secure the authorization of a Deputy Assistant Attorney General, the application may be authorized by the United States Attorney (or where the case is not being handled by a United States Attorney's Office, by the appropriate supervisory official of the Department of Justice) if an appropriate Deputy Assistant Attorney General is notified of the authorization and the basis for justifying such authorization under this part within 72 hours of the authorization.

(3) Whenever possible, a request for authorization by an appropriate Deputy Assistant Attorney General of a search warrant application pursuant to paragraph (b)(2) of this section shall be made in writing and shall include:

(i) The application for the warrant; and

of practice at a hospital or clinic shall be deemed to be in the private possession of the physician, unless the clinic or hospital is a suspect in the offense.

(ii) A brief description of the facts and circumstances advanced as the basis for recommending authorization of the application under this part.

If a request for authorization of the application is made orally or if, in an emergency situation, the application is authorized by the United States Attorney or a supervisory official of the Department of Justice as provided in paragraph (b)(2) of this section, a written record of the request including the materials specified in paragraphs (b)(3) (i) and (ii) of this section shall be transmitted to an appropriate Deputy Assistant Attorney General within 7 days. The Deputy Assistant Attorneys General shall keep a record of the disposition of all requests for authorizations of search warrant applications made under paragraph (b) of this section.

(4) A search warrant authorized under paragraph (b)(2) of this section shall be executed in such a manner as to minimize, to the greatest extent practicable, scrutiny of confidential materials.

(5) Although it is impossible to define the full range of additional doctor-like therapeutic relationships which involve the furnishing or development of private information, the United States Attorney (or where a case is not being handled by a United States Attorney's Office, the appropriate supervisory official of the Department of Justice) should determine whether a search for documentary materials held by other disinterested third party professionals involved in such relationships (e.g. psychologists or psychiatric social workers or nurses) would implicate the special privacy concerns which are addressed in paragraph (b) of this section. If the United States Attorney (or other supervisory official of the Department of Justice) determines that such a search would require review of extremely confidential information furnished or developed for the purposes of professional counseling or treatment, the provisions of this subsection should be applied. Otherwise, at a minimum, the requirements of paragraph (a) of this section must be met.

(c) *Considerations bearing on choice of methods.*

In determining whether, as an alternative to the use of a search warrant, the use of a subpoena or other less intrusive means of obtaining documentary materials would substantially jeopardize the availability or usefulness of the materials sought, the following factors, among others, should be considered:

¹ Notwithstanding the provisions of this section, any application for a warrant to search for evidence of a criminal tax offense under the jurisdiction of the Tax Division must be specifically approved in advance by the Tax Division pursuant to section 6-2.330 of the U.S. Attorneys' Manual.

² Documentary materials created or compiled by a physician, but retained by the physician as a matter

(1) Whether it appears that the use of a subpoena or other alternative which gives advance notice of the government's interest in obtaining the materials would be likely to result in the destruction, alteration, concealment, or transfer of the materials sought; considerations, among others, bearing on this issue may include:

(i) Whether a suspect has access to the materials sought;

(ii) Whether there is a close relationship of friendship, loyalty, or sympathy between the possessor of the materials and a suspect;

(iii) Whether the possessor of the materials is under the domination or control of a suspect;

(iv) Whether the possessor of the materials has an interest in preventing the disclosure of the materials to the government;

(v) Whether the possessor's willingness to comply with a subpoena or request by the government would be likely to subject him to intimidation or threats of reprisal;

(vi) Whether the possessor of the materials has previously acted to obstruct a criminal investigation or judicial proceeding or refused to comply with or acted in defiance of court orders; or

(vii) Whether the possessor has expressed an intent to destroy, conceal, alter, or transfer the materials;

(2) The immediacy of the government's need to obtain the materials; considerations, among others, bearing on this issue may include:

(i) Whether the immediate seizure of the materials is necessary to prevent injury to persons or property;

(ii) Whether the prompt seizure of the materials is necessary to preserve their evidentiary value;

(iii) Whether delay in obtaining the materials would significantly jeopardize an ongoing investigation or prosecution; or

(iv) Whether a legally enforceable form of process, other than a search warrant, is reasonably available as a means of obtaining the materials. The fact that the disinterested third party possessing the materials may have grounds to challenge a subpoena or other legal process is not in itself a legitimate basis for the use of a search warrant.

§ 59.5 Functions and authorities of the Deputy Assistant Attorneys General.

The functions and authorities of the Deputy Assistant Attorneys General set out in this part may at any time be exercised by an Assistant Attorney General, the Associate Attorney

General, the Deputy Attorney General, or the Attorney General.

§ 59.6 Sanctions.

(a) Any federal officer or employee violating the guidelines set forth in this part shall be subject to appropriate disciplinary action by the agency or department by which he is employed.

(b) Pursuant to section 202 of the Privacy Protection Act of 1980 (Sec. 202, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa-12)), an issue relating to the compliance, or the failure to comply, with the guidelines set forth in this part may not be litigated, and a court may not entertain such an issue as the basis for the suppression or exclusion of evidence.

Issued this 13th day of April 1981.

William French Smith,
Attorney General.

[FR Doc. 81-11715 Filed 4-16-81; 8:45 am]
BILLING CODE 4410-01-M

POSTAL SERVICE

39 CFR Part 776

Floodplain Management and Protection of Wetlands Procedures

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is adopting procedures for implementing Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands. These procedures set forth general policy criteria, and requirements. Specific guidance for administrative personnel is provided by a more detailed Postal Service publication, Environmental Procedures Handbook RE-6.

EFFECTIVE DATE: May 17, 1981.

FOR FURTHER INFORMATION CONTACT: Frank Rowan, (202) 245-4348.

SUPPLEMENTARY INFORMATION: On February 3, 1981, the Postal Service published for comment in the *Federal Register* the proposed procedures described above. 46 FR 10513. Interested persons were invited to submit written comments concerning the proposed procedures by March 5, 1981. No comments were received. Accordingly, the Postal Service is adopting the procedures as a final rule.

We are, however, correcting a printing error and making a few minor conforming changes to the text.

In view of the above considerations, the Postal Service adds new part 776 of

title 39, Code of Federal Regulations, reading as follows:

Fred Eggleston,

Assistant General Counsel, Legislative Division.

PART 776—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS PROCEDURES

Sec.

776.1 Purpose and Policy.

776.2 Responsibility.

776.3 Scope.

776.4 Definitions.

776.5 New Construction.

776.6 Existing buildings, owned or leased.

776.7 Disposal, lease, easement to non-federal public or private parties.

776.8 Public notice.

Authority: 39 U.S.C. 401.

§ 776.1 Purpose and Policy.

(a) Executive Order 11988, Floodplain Management, was issued on May 24, 1977, under authority of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, et seq.) (NEPA), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001), and the Flood Disaster Protection Act of 1973 (P.L. 93-234, 87 Stat. 9451). Executive Order 11990, Protection of Wetlands, was issued on May 24, 1977, under authority of NEPA. The purpose of these Orders was to avoid adverse impacts associated with the occupancy and/or modification of floodplains; or the modification and destruction of wetlands.

(b) These procedures implement Executive Orders 11988 and 11990 and are adopted under the Postal Reorganization Act rather than the statutes listed in § 776.1(a) to the extent these statutes do not apply to the Postal Service under 39 U.S.C. 410(a).

(c) These procedures provide guidance:

(1) To avoid direct or indirect, long or short term adverse impact on floodplains and wetlands;

(2) To reduce the risk of flood loss;

(3) To minimize the impact of floods on human safety, health, and welfare;

(4) To restore and preserve the natural and beneficial values served by floodplains;

(5) To minimize the destruction, loss, or degradation of wetlands;

(6) To preserve and enhance the natural and beneficial values of wetlands; and

(7) To avoid direct or indirect support of floodplain development.

(d) These procedures are general in nature. Postal Service Handbook RE-6, *Environmental Procedures*, provides

detailed procedures for implementing these executive orders.

§ 776.2 Responsibility.

The Assistant Postmaster General, Real Estate and Buildings Department, is responsible for overall compliance with these procedures.

§ 776.3 Scope.

These procedures are applicable to every proposed postal facility project which involves:

- (a) New construction, for ownership or lease;
- (b) Existing buildings, owned or leased, except the acquisition of existing leased facilities when no substantial external change in the configuration of the facility will occur;
- (c) Modernization or improvement of an existing facility where the external configuration of the building or the use of the facility is changed substantially and significantly;
- (d) Disposal or lease of owned, excess property;
- (e) Proposals for granting a property easement or right-of-way to non-federal public or private parties.

§ 776.4 Definitions.

- (a) A *floodplain*, for the purposes of these procedures, is the area in which a flood has a one percent chance of occurrence in any given year (also known as a 100-year flood).
- (b) A *wetland*, for the purposes of these procedures, is an area that is inundated by surface or ground water frequently enough to support a prevalence of vegetable or aquatic life requiring saturated or seasonally saturated soil conditions for growth and reproduction.
- (c) A *Site Planning Report* is a document used to identify and evaluate sites available for a proposed construction or real estate action.
- (d) An *Economic Analysis Report* is a document which evaluates the economic value of alternatives.

§ 776.5 New Construction.

- (a) *Restriction on Consideration of Floodplain/Wetland*. During the evaluation of the preferred area for the proposed project, floodplain and wetland areas may be considered *only* when there is no practicable, alternative site.
- (b) *Floodplain/Wetland Information*. Floodplain and wetland information must be compiled and considered throughout the facility planning process. If a proposed action will occur in or impact a floodplain or wetland site, specific floodplain or wetland information must be developed. As a minimum, the information should:

- (1) Document whether the proposed action will directly or indirectly support floodplain development.
- (2) Document the impacts a proposed action would have on the floodplain or wetland, including positive and negative; concentrated and dispersed; short-term and long-term.
- (3) Document the flood hazard and risk to lives and property.
- (4) Present the natural and beneficial floodplain values.
- (5) Present measures which will preserve the floodplain, minimize harm to it, or restore it. Minimization of harm is assessed in terms of:
 - (i) The amount of investment at risk or the flood loss potential of the action itself,
 - (ii) The impact the action may have on others, and
 - (iii) The impact the action may have on floodplain values.
- (c) *Environmental Assessment/Impact Statement*. Information developed concerning the floodplain or wetland must be evaluated in an Environmental Impact Statement or an Environmental Assessment, if either is prepared, and made available to the public under 39 CFR Part 775.

(d) *Site Planning Report*. During site evaluation and the preparation of the Site Planning Report, a determination must be made whether any of the identified site alternatives would require construction in, or appear to have an impact on, a floodplain or wetland. This information will be included as a part of the Site Planning Report and the Environmental Assessment.

(e) *Scope of Alternatives*. If any of the site alternatives identified in the Site Planning Report are located within a floodplain or wetland, the scope of alternatives considered in the preliminary Analysis Report must include:

- (1) Alternate sites as identified in the Site Planning Report;
- (2) Other means which accomplish the same purpose as the proposed action; and
- (3) A no-action alternative.

(f) *Reevaluation*. If, after consideration of the Site Planning Report, Environmental Assessment, and preliminary Economic Analysis Report, the determination is that there appears to be no practicable alternative to locating in a floodplain or wetland, a final reevaluation of alternatives must be conducted. The Headquarters Director, Office of Program Planning, Real Estate and Buildings (RE&B) Department, is responsible for this reevaluation. To facilitate this reevaluation, the Regional Director, RE&B Department, must compile and

submit the following data to the HQ Director, Office of Program Planning, RE&B Department:

- (1) A summary of reasons why the rejected alternatives and alternative sites, if any, were considered impracticable.
- (2) Detailed descriptions of all rejected alternatives and alternative sites.
- (3) A summary of comments received from the public and A-95 Clearinghouses as a result of proper public notices.
- (4) The Site Planning Report.
- (5) The Site Planning Report Environmental Assessment.
- (6) The floodplain or wetland location map from which the determination was made. The map or other information should indicate appropriate site elevations (contours), base floor elevation, and the floodplain elevation at the site.
- (7) The facility functional design specifications or site utilization drawings, if available.
- (8) Other information pertinent to the proposal as determined by the stage of development of the project.
- (g) *Alternative Available*. If the HQ Director, Office of Program Planning, RE&B Department, determines that there may be a practicable site alternative to the one selected, the appropriate Postal Service organization is advised to abandon the selected course and pursue other alternatives.
- (h) *No Alternative*. HQ Director, Office of Program Planning, RE&B Department, determines that there is not a practicable alternative to siting in a floodplain or wetland, the appropriate Postal Service organization is so advised. The Director may provide instructions for mandatory measures to be accomplished during design and construction to minimize harm to the floodplain or wetland.
- (i) *Public Notice*. If there is no practicable alternative to locating the site in a floodplain or wetland, the Regional Director, RE&B Department, must provide a public notice [see § 776.8] as soon as possible for the proposed action. The notice includes:
 - (1) A description of why the proposed action must be located in a floodplain or wetland;
 - (2) A description of all significant facts considered in making the determination, including alternative sites and actions;
 - (3) A statement indicating whether the actions conform to applicable state or local floodplain/wetland protection standards;

(4) If applicable, a statement indicating why the National Flood Insurance Program criteria are demonstrably inappropriate for the proposed action;

(5) A description of measures that will be taken to minimize harm to the floodplain or wetland;

(6) A statement indicating how the action affects natural or beneficial floodplain values; and

(7) A list of any other involved agencies or individuals.

(j) *Design Requirements.* If structures impact, are located in, or support development of a floodplain or wetland, the design must include measures necessary (1) to minimize harm to the floodplain or wetland; (2) to reduce the risk of flood loss; (3) to minimize destruction, loss, or degradation of wetlands; (4) to minimize the impact on human safety, health, and welfare; and (5) to restore and preserve the natural and beneficial floodplain and wetland values. Construction must conform, at a minimum, to the standards and criteria of the National Flood Insurance Program, except where those standards are demonstrably inappropriate for postal purposes.

§ 776.6 Existing buildings owned or leased.

(a) *Installing Markers for Flood Hazards.* If property used by the general public has suffered flood damage or is located in a floodplain or flood hazard area, conspicuous markers must be installed on structures and other appropriate places to show past flood record height and the probable 100-year flood height. These must be installed where they will be readily visible to the general public visiting or using the facility.

(b) *Warning Procedures for Floods.* The Regional Director, Mail Processing Department, must develop warning and evacuation procedures for properties subject to flash floods or rapid rise floods.

§ 776.7 Disposal, lease, easement to non-federal public or private parties.

For actions involving a lease, easement right-of-way, or disposal to non-federal public or private parties, a determination whether the proposed action will occur in a floodplain or wetland must be made. If the action will occur in a floodplain or wetland, the Postal Service must:

(a) Reference in the conveyance those uses that are restricted under identified federal, state, or local floodplain or wetland regulations; and

(b) Attach other appropriate restrictions to the use of properties by

the Grantee or purchaser and any successors, which assure (1) that harm to lives, property, and the floodplain or wetland values are identified and are minimized, and (2) that floodplain or wetland values are restored and preserved, except where prohibited by law; or

(c) Withhold the property from conveyance.

§ 776.8 Public notice.

(a) Public notice of Postal Service plans for locating a proposed project in a floodplain or a wetland will be sent to: state, areawide, and local A-95 Clearinghouses listed in OMB Circular A-95 (Revised) for the geographic area involved; local public officials; local newspapers; and other parties who express interest in the project.

(b) The notice must contain the information described in § 776.5(i).

(c) The public notice also must contain a provision for a 30-day public commenting period before any action is taken to acquire the site.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL 1792-2]

Approval and Promulgation of Secondary Nonattainment Plans for Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Part D of the Clean Air Act, as amended in 1977, requires states to revise their State Implementation Plans for all areas that have not attained the National Ambient Air Quality Standards. The State of Iowa submitted the required revisions on June 22, 1979. In the final rulemaking on that submission (45 FR 14561 March 6, 1980), EPA took a number of actions including granting an extension until July 1, 1980, for submission of plans to attain secondary particulate standards in 12 nonattainment areas.

The State submitted secondary nonattainment plans on April 18, 1980. EPA proposed approvals and conditional approvals of all portions of the submission on August 4, 1980 (45 FR 51620). In this notice the Iowa submission is summarized and public comments and approval issues are discussed. EPA fully approves some

portions of the Iowa submission and conditionally approves other portions.

Approval means that regulations adopted by the state will also be enforceable by the Federal Government. Any strategies committed to by the state become obligations upon the state.

EFFECTIVE DATE: May 18, 1981.

ADDRESSES: Copies of the state submission, public comments and the EPA prepared support document are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106

Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street, S.W., Washington, D.C. 20406

Iowa Department of Environmental Quality, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319

The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler at 816-374-3791.

SUPPLEMENTARY INFORMATION:

A. General Discussion

The Clean Air Act as amended in 1977 contains requirements concerning air pollution which must be satisfied by all states. In particular, Section 107 of the Act requires an identification of each area which has not yet attained the National Ambient Air Quality Standards (NAAQS). Section 172 requires each State Implementation Plan (SIP) to be revised to provide for the attainment and maintenance of the NAAQS in these identified nonattainment areas. Section 172 also generally requires the submission of these revised plans by January 1, 1979, and requires that such plans be approved by July 1, 1979, unless the state has been granted an extension of time to submit a plan to attain secondary standards.

For general background the reader should refer to the *Federal Register* of April 4, 1979 (44 FR 20362) for the General Preamble to the Proposed Rulemaking for all nonattainment plan submissions. The General Preamble was supplemented 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). These *Federal Register* notices describe in greater detail the requirements for an approvable nonattainment plan.

This rulemaking includes a brief description of each requirement of the

Act, and evaluation of the SIP as it relates to the requirements and a discussion of pertinent public comments.

In some cases EPA is taking final action to conditionally approve portions of the SIP. The conditions require the state to submit additional materials by the deadlines specified in today's notice. There will be no extension of the conditional approval deadlines. EPA will follow the procedures described below when determining if the state has satisfied the conditions.

1. If the state submits the required material 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 state's submission to determine if the condition is fully met. After review is complete, a notice will be published proposing or taking final action to either 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.

3. If the state fails to timely submit the materials needed to meet a condition, EPA will publish a notice shortly after the expiration of the time limit for submission. The notice will withdraw conditional approval and disapprove the SIP.

B. Background

The Iowa Department of Environmental Quality (DEQ) submitted a package of SIP revisions pertaining to nonattainment areas to EPA on June 22, 1979. The submission contained plans to attain primary standards in four nonattainment areas and a package of proposed redesignations of attainment status under Section 107 of the Act. EPA proposed approval action on this submission in the *Federal Register* of September 7, 1979 (44 FR 52263). Final action was taken on March 6, 1980 (45 FR 14561). In the final rulemaking, EPA noted the state's commitment to submit secondary particulate attainment plans and granted the state an extension until July 1, 1980, for submitting these plans.

On April 18, 1980, the DEQ, at the request of the Governor, submitted plans to attain the secondary standard in four areas which exceed both primary and secondary standards and eight additional areas which exceed only the secondary standard. EPA published proposed rulemaking (PRM) on this submission on August 4, 1980 (45 FR 51620). In that notice EPA proposed approvals and conditional approvals

with respect to all portions of the state submission.

Some actions in today's rulemaking are different from those proposed. This is because additional information submitted by DEQ has altered or even eliminated the noted deficiencies. In addition, certain deadlines for satisfying conditions being promulgated today are different from those in the PRM. In general, these revised deadlines are the result of comments by DEQ. EPA finds that notice and comment on these revised deadlines is unnecessary since the public has had opportunity to comment on the conditional approvals and on what deadlines should apply for these conditions; and the state is responsible for meeting the deadlines and has agreed to them.

C. Designated Nonattainment Areas

Nonattainment designations for Iowa under Section 107 were promulgated on March 3, 1978 (43 FR 8962). These nonattainment designations were codified at 40 CFR Part 81. At that time, eight areas were designated as exceeding the primary and secondary standards for total suspended particulates (TSP) and an additional four areas were designated as exceeding only secondary standards for TSP.

In the March 6, 1980, rulemaking, EPA changed the designation of four areas which had been designated both primary and secondary nonattainment by removing the primary nonattainment designations and retaining the secondary nonattainment designation. The final designations indicate the following cities exceed both primary and secondary TSP standards: Mason City, Cedar Rapids, Des Moines, and Davenport. The following cities exceed only secondary TSP standards: Keokuk, Council Bluffs, Fort Dodge, Sioux City, Clinton, Marshalltown, Muscatine, and Waterloo.

The June 22, 1979, state submission addressed attainment of primary standards in the four cities listed above. The submission April 18, 1980, addresses attainment of secondary standards in all 12 of these areas.

D. Nonattainment Plan Provisions

The SIP submission consists of a mix of strategies including more stringent emission limits and commitments to conduct studies to determine what additional control measures may be necessary.

The submission contains individual plans for each of the twelve nonattainment areas. The plans to attain secondary standards in the four areas which also exceed primary standards are in the form of addendum documents

which update the previously submitted primary attainment plans to also address secondary standards. For the eight areas which exceed only the secondary standard, the state submittal is intended to address all part D requirements.

For convenience, the four areas referenced above which exceed the primary as well as secondary standards will be referred to as primary areas. Areas which exceed only the secondary standard will be referred to as secondary areas.

The following sections discuss each of the requirements of Section 172 and give the final approval status with respect to the requirement. The various requirements are addressed in the order that they appear in the Act.

(1) *Demonstration of Attainment.* Section 172(a)(1) requires the plans to provide for attainment of each NAAQS in each area as expeditiously as practicable. Primary particulate standards must be met by December 31, 1982, but no specific deadline is set for attaining the secondary standard.

(a) *Primary Areas.* Because the state believes that agricultural dust must be reduced to attain the standard, and because this reduction will be accomplished by soil erosion control programs, which are just beginning, the state has selected 1995 as the date to attain the secondary standard in the four primary areas. In the PRM, EPA stated that the plans do not adequately demonstrate that the attainment date is, in fact, as expeditious as practicable. However, EPA also stated that this is considered a minor deficiency in that the state may be able to make an adequate demonstration once the planned nontraditional studies, described in the PRM, are complete; and there is no evidence at this time that the attainment date is not expeditious.

EPA proposed approval on the condition that the state submit reanalysis of the attainment date by December 31, 1981. This date was selected based on the completion date of scheduled studies on the control of nontraditional dust sources.

One commenter suggested that the attainment date is not expeditious but provided no evidence that it is not. Therefore, EPA has determined that conditional approval, as proposed, is appropriate.

EPA hereby approves the Iowa SIP for the four primary areas with respect to Section 172(a)(1) on the condition that the reanalysis of the attainment date discussed above be submitted to EPA by December 31, 1981.

(b) **Secondary Areas.** Each of the secondary area plans specifies an attainment date of 1985. The state believes this will allow adequate time to conduct studies in the nonattainment areas and to implement the measures shown to be effective in reducing particulate levels. The schedule calls for studies to be completed in 1981, new regulations to be adopted in 1982, sources to come into compliance with the new rule in 1983 and 1984 and for attainment of the secondary standard in 1985. EPA proposed to approve the 1985 attainment date as being as expeditious as practicable because it will be the initial control effort for the nontraditional categories of sources and difficulties can be reasonably anticipated both in developing strategies and in implementing them.

No comments were received on this proposal. EPA hereby approves the Iowa SIP as providing for attainment of the secondary standard as expeditiously as practicable in the eight secondary areas.

(2) **Public Participation.** Section 172(b)(1) requires plans be adopted after reasonable notice and public hearing. The plans were considered at a public hearing held in Des Moines, Iowa on February 26, 1980. This hearing was announced in the Iowa Administrative Bulletin and in several newspapers during December 1979. The plans were officially adopted during a public meeting of the Iowa Air Quality Commission in Des Moines, Iowa, on March 11, 1980.

EPA proposed to accept this procedure as representing reasonable notice and public hearing. No comments were received on this proposal. EPA approves the state plans as satisfying Section 172(b)(1).

(3) **Reasonably Available Control Measures.** Section 172(b)(2) requires implementation of all reasonably available control measures as expeditiously as practicable.

(a) **Fugitive Emissions.** The submissions states that the current SIP does not require use of reasonably available control technology (RACT) to reduce fugitive emissions from all traditional sources in secondary nonattainment areas.

To require the use of RACT on all traditional sources in nonattainment areas the state modified its fugitive emission regulation to eliminate a provision requiring a complaint to start enforcement action. Previously, this rule applied only in primary nonattainment areas. The state has now extended its applicability to secondary nonattainment areas.

As discussed in the PRM, the fugitive emissions regulation does not state which sources are regulated and what they are expected to do. The state commented that reasonable efforts will not be the same in all cases and that to address all possible situations would be impossible. However, EPA believes that the state should specify which types of sources are affected and what each category is expected to do. EPA approved this rule as it relates to primary areas with the condition that the state develop an enforcement guidance manual for implementing this regulation in those areas and submit it by February 1, 1981.

In the PRM, EPA proposed approval of the rule as it relates to secondary areas on the condition that similar guidance be developed for these areas and that this material be submitted by February 1, 1981. No public comments were received on this proposal. The state has committed to submitting this material; however, because the exact nature of this condition is not known to state until this rulemaking is published, the proposed date is no longer appropriate. Therefore, the submission date is set at June 1, 1981. This is the only change from the proposal. EPA hereby approves the Iowa SIP on the condition that the material discussed above be submitted by June 1, 1981.

(b) **Fuel Burning.** The state submission does not demonstrate that fuel burning sources of particulate are controlled to levels representing RACT. However, the state has committed to make such a demonstration. For the primary nonattainment areas EPA approved this provision on the condition that the information be submitted by February 1, 1981. Since it will take additional time to analyze the sources in the secondary areas after the sources in the higher priority primary areas are completed, EPA proposed approval with respect to the eight secondary areas on the condition that the additional information be submitted by July 1, 1981. No comments were received on this proposal. The state has committed to submit this analysis and has it in process. EPA approves the state submission on the condition that the demonstration discussed above be submitted by July 1, 1981.

(4) **Reasonable Further Progress.** Section 172(b)(3) requires reasonable further progress (RFP) toward attaining the standard by the date specified in the SIP.

(a) **Primary Areas.** Each primary plan contains a schedule of emission reductions and a schedule of studies to be undertaken to develop control strategies which will achieve those

reductions. The state proposes a number of studies concerning nontraditional sources of particulate; that is, such sources as roads and parking lots, rather than industrial buildings. The studies would include analysis of air samples to determine what types of sources are causing violations, inventories and evaluations to determine which sources need to be controlled and tests to determine what control methods would be most effective in controlling the sources which must be controlled.

In the primary areas the state schedule calls for studies during 1980 with new control strategies to become effective in 1981 to attain the primary standard. Adoption of additional strategies is expected following primary attainment but the plan does not firmly commit to the schedule of studies and implementation of needed control measures. For that reason, EPA proposed conditional approval with additional information to be submitted by November 1, 1980.

No public comments were received. However, because the exact nature of this condition is not known to the state until this rulemaking is published, the proposed date is no longer appropriate. Therefore the submission date is set at June 1, 1981. This is the only change from the proposal.

EPA hereby approves the Iowa SIP as demonstrating RFP in primary areas on the condition that, by June 1, 1981, the state submits a commitment and schedule for completing studies and expeditiously implementing the results of such studies in the form of control strategies.

(b) **Secondary Areas.** The secondary areas plans present base year inventories and graphs showing annual emission reductions with attainment by 1985. EPA proposed to approve this demonstration as demonstrating RFP. No comments were received on this proposal. EPA approves the Iowa SIP as demonstrating RFP in secondary areas.

(5) **Emission Inventory.** Section 172(b)(4) requires the plan to include a comprehensive and accurate current inventory of all sources in each nonattainment area. EPA proposed approval with respect to this requirement because Iowa has submitted adequate inventories for each nonattainment area and has committed to provide updates of emission information. No comments were received on this proposal. EPA approves the Iowa plan with respect to Section 172(b)(4).

(6) **Emission Growth.** Section 172(b)(5) requires the plan to expressly define and quantify the emissions, if any, which

will be allowed to result from the construction and operation of major new or modified stationary sources in a nonattainment area.

For primary areas, Iowa has provided for growth by an emission offset rule whereby new sources cannot be allowed to be built unless there are corresponding reductions in emissions from existing sources.

In secondary areas the state has selected a margin for growth. The state chose 5 micrograms per cubic meter, which is 3.3 percent of the standard of 150 micrograms per cubic meter, and the plans were written to accommodate this amount of growth. The state has committed to requiring additional emission reductions for existing sources any time the growth margin is used up, to allow economic growth while still providing for reasonable further progress and attainment.

EPA proposed to approve the state submission as meeting the requirements of Section 172(b)(5). One commentator wished to know how the growth margin was developed. As described above, the margin was selected for the purpose of accommodating new source emissions. The plans were then written, with sufficient emission reductions, to provide for the selected margin. EPA finds this procedure acceptable. EPA hereby approves the Iowa SIP as complying with Section 172(b)(5).

(7) *Permits.* Section 172(b)(6) requires permits for the construction and operation of new or modified major stationary sources. In the PRM, EPA discussed a number of points with respect to the state rules on offsets and new source permits. However, on December 30, 1980, the State submitted a package of regulatory revisions dealing with permits and offsets. Since it is not appropriate to act on state rules after they have been changed, EPA takes no action at this time with respect to the requirements of Section 172(b)(6). Therefore, the requirements of the Emission Offset Interpretative Ruling (40 CFR Part 51, Appendix S) remains in effect. When EPA has evaluated this latest submission, a new notice of proposed rulemaking will be published.

(8) *Resources.* Section 172(b)(7) requires an identification and commitment of resources to carry out the plan. EPA finds the state submission satisfies this requirement. The PRM proposed approval and no public comments were received on this proposal. EPA approves the Iowa SIP as meeting the requirements of Section 172(b)(7).

(9) *Limits and Schedules.* Section 172(b)(8) requires emission limits, schedules of compliance and other

measures as may be necessary to meet the requirements of the Act. The secondary area plans do not contain schedules for compliance even though they do contain new emissions limitations. The rule relating to fugitive emissions became effective July 1, 1980. Sources on compliance schedules by July 1, 1980 would be allowed until June 30, 1981 to come into compliance. Since no compliance schedules were submitted as part of the SIP, all sources must be in compliance now.

The plan also contains other measures as necessary for attainment. In particular, it contains schedules to conduct studies of nontraditional source controls and to implement the results of these studies as control strategies as discussed in paragraph D.(1) above. EPA proposed to approve these as meeting the requirements relating to emission limits, compliance schedules and other measures. No comments were received on this proposal. EPA approves the state plan as meeting the requirements of Section 172(b)(8).

(10) *Consultation.* Section 172(b)(9) requires evidence of public, local government and state legislative involvement including an identification and analysis of air quality, health, welfare, economic, energy and social effects of the plans and a summary of the public comments on such analysis. The plans contain evidence that the local leaders in all areas were consulted in developing these plans. The required analysis was made available to the public in January 1980. No public comments on the analysis were received. The state legislature was involved in the review of the proposed plan through its Administrative Rules Review Committee.

EPA proposed to approve these plans as meeting this requirement. No comments were received on this proposal. EPA hereby approves the state submission as meeting the requirements of Section 172(b)(9).

(11) *Commitments.* Section 172(b)(10) requires written evidence that the necessary requirements, schedules and time tables have been legally adopted and are committed to be implemented. The plans contain evidence that the regulations thus far submitted have been legally adopted and are legally enforceable against subject sources. The future studies to be performed are firm commitments by the State of Iowa. Through the mechanism of the Iowa/EPA Agreement, EPA finds the necessary commitments exist and these plans are approvable with respect to this provision. EPA proposed approval and no public comments were received. EPA approves the Iowa submission as

meeting the requirements of Section 172(b)(10).

E. Summary

The Administrator's decision to approve, disapprove or conditionally approve proposed revisions is based on comments received on a determination of whether or not the revisions meet the requirements of Part D and Section 110(a)(2) of the Clean Air Act and of 40 CFR Part 51. Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

Based on the Administrator's determination, EPA generally approves Iowa's plans to attain the secondary standards for total suspended particulate in the eight secondary nonattainment areas and in four primary nonattainment areas. EPA conditionally approves the plans with respect to reasonable further progress and secondary standard attainment date in primary areas and reasonably available control measures in secondary areas. No action is taken with respect to new source permits. EPA unconditionally approves the plans with respect to other requirements. The previously submitted plans to attain the primary standards are not changed, except as specifically noted in this document. In particular, the conditional approvals relating to maintenance of standards and to reasonably available control measures are not changed.

The measures approved today are in addition to, and not in lieu of, existing state regulations. The present emission control regulations remain applicable and enforceable to prevent a source from operating without controls or under less stringent controls, while it moves toward compliance with new regulations. Failure of a source to meet applicable existing regulations will result in appropriate enforcement action. Furthermore, if there is any instance of delay or lapse in the applicability or enforceability of any regulation, because of a court order or for any other reason, the preexisting regulations will be applicable and enforceable.

Under Section 307(b)(1) of the Clean Air Act, as amended, 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), 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. In this case, the appropriate court is the Eighth Circuit Court of Appeals.

Today's action also corrects an error in a previous Federal Register publication. In the notice of June 1, 1977 (42 FR 27892) the list of regulatory revisions submitted by the state inadvertently omitted the approval of Rule 3.2 as was discussed in the preamble. Today's revision of 40 CFR 52.820(c)(25) corrects this error.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it only approves state actions. It imposes no new regulatory requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to these comments are available at EPA Region VII, 324 East 11th Street, Kansas City, Missouri 64106.

Note.—Incorporation by reference of the state implementation plan for the State of Iowa was approved by the Director of the Federal Register on July 1, 1980.

(Secs. 110, 172 and 301 of the Clean Air Act, as amended (45 U.S.C. 7410, 7502, and 7601))

Dated: April 8, 1981.

Walter C. Barber, Jr.
Acting Administrator.

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

Subpart Q—Iowa

1. Section 52.820 is amended by revising paragraph (c)(25) and adding paragraphs (c)(30), (c)(32), and (c)(33) as follows:

§ 52.820 Identification of plan.

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

(25) Revisions to Rules 1.2, 2.1, 3.1, 3.2, 4.1, 4.3, 4.4, and new Chapters 14 and 52 of the Iowa Administrative Code Relating to Air Pollution Control were submitted June 9, 1976, by the Department of Environmental Quality (Subrules 4.3(3)a(1) and 4.3(3)a(5) were disapproved).

(30) Nonattainment plan provisions as required by the Clean Air Act Amendments of 1977 were submitted on April 18, 1980, by the Department of Environmental Quality. The submission included amended rule 4.3(2) relating to fugitive dust and amended rule 3.5 relating to particulate matter offsets. The revisions included plans to attain the secondary particulate standards for

all areas designated nonattainment as of March 6, 1980. The submission was conditionally approved with respect to several requirements.

(31) [Reserved]

(32) Additional information to support the April 18, 1980 submission was submitted on September 16, 1980, by the Department of Environmental Quality.

(33) Additional information to support the April 18, 1980 submission was submitted on November 17, 1980, by the Department of Environmental Quality.

2. Section 52.826 is amended by adding paragraphs (d) and (e) as follows:

§ 52.826 Conditions of Approval.

(d) Secondary standard attainment date. The state must submit by December 31 1981, a reanalysis of the attainment date for the secondary particulate standard based on the results of studies of non-traditional sources and control techniques, for the four areas designated nonattainment for primary particulate standard as of March 6, 1980.

(e) Reasonably available control measures for sources of particulate in

secondary particulate nonattainment areas. The state must submit, by the date specified, the following:

(1) An enforcement guidance manual detailing the requirements on sources in secondary nonattainment areas subject to the Iowa Administrative Code, subparagraph (2) *Nonattainment Area*, of rule 4.3(2)c, *Fugitive Dust* (IAC 400—4.3(2)c.(2)), by June 1, 1981.

(2) A demonstration that the state requires all major fuel burning sources of particulate in secondary nonattainment areas to be controlled to a level representing reasonably available control technology, by July 1, 1980.

(3) A schedule for completing studies and a commitment to expeditiously implement measures found to be effective, by June 1, 1981.

3. Section 52.827 is revised to read as follows:

§ 52.827 Attainment dates for national standards.

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

Air quality control region	Pollutant					
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide
	Primary	Secondary	Primary	Secondary		Ozone
Metropolitan Omaha, Council Bluffs Interstate:						
a. Council Bluffs	a	e	b	a	c	c
b. Remainder of AQCR	a	a	b	a	c	c
Metropolitan Sioux Falls Interstate:	b	a	c	c	c	c
Metropolitan Sioux City Interstate:						
a. Sioux City	b	e	c	c	c	c
b. Remainder of AQCR	b	a	c	c	c	c
Metropolitan Dubuque Interstate:						
a. Dubuque	a	a	d	d	c	c
b. Remainder of AQCR	a	a	c	c	c	c
Metropolitan Quad Cities Interstate:						
a. Davenport	d	f	c	c	c	c
b. Clinton	a	e	c	c	c	c
c. Muscatine	a	e	c	c	c	c
d. Remainder of AQCR	a	a	c	c	c	c
Burlington-Keokuk Interstate:						
a. Keokuk	a	e	a	a	c	c
b. Remainder of AQCR	a	a	a	a	c	c
Northwest Iowa Intrastate:	c	c	c	c	c	c
North Central Iowa Intrastate:						
a. Fort Dodge	a	e	c	c	c	c
b. Mason City	d	f	c	c	c	c
c. Remainder of AQCR	a	a	c	c	c	c
Northeast Iowa Intrastate:						
a. Cedar Rapids	d	f	c	c	c	d
b. Waterloo	a	e	c	c	c	c
c. Remainder of AQCR	a	a	c	c	c	c
Southwest Iowa Intrastate:	c	c	c	c	c	c
South Central Iowa Intrastate:						
a. Des Moines	d	f	c	c	c	d
b. Marshalltown	a	e	c	c	c	a
c. Remainder of AQCR	a	a	c	c	c	a
Southeast Iowa Intrastate:	c	c	c	c	c	c

NOTE.—Dates of 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. July 1975.

b. Air quality levels presently below primary standards.

c. Air quality levels presently below secondary standards.

d. December 31, 1982.

e. January 1, 1985.

f. January 1, 1985.

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 52.827 (1978).

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40 CFR Part 52

[A-5-FRL 1787-7]

Approval and Promulgation of Michigan Implementation Plan—Ozone

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: On October 28, 1980 (45 FR 71379), the Environmental Protection Agency (EPA) proposed approval of and invited public comment on the ozone control strategy and transportation control plan for Niles, Michigan, a portion of the South Bend, Indiana urbanized area. Two public comments were received. The purpose of this notice is to discuss the comments received and to announce EPA's final rulemaking action to approve this revision to the Michigan State Implementation Plan.

DATE: This final rulemaking becomes effective on April 1, 1981.

ADDRESSES: Copies of these SIP revisions, public comments received and EPA's final evaluation are available for public inspection during normal business hours at the following addresses:

United States Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

United States 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: Judy Kertcher, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-8038.

SUPPLEMENTARY INFORMATION:

General Information

On March 3, 1978 (43 FR 8962) and October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act) as amended, EPA

designated certain areas in each State as not meeting the National Ambient Air Quality Standards (NAAQS) for various pollutants. These areas are delineated at 40 CFR Part 81. 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. Under certain conditions the attainment date may be extended to no later than December 31, 1987, for ozone and carbon monoxide.

On April 25, 1979, the State of Michigan submitted to EPA plans for all of the designated ozone and carbon monoxide nonattainment areas in the State.

Additional material concerning ozone attainment was submitted to EPA by the State on October 28, 1979, and on November 8, 1979. On December 26, 1979, the State of Michigan submitted transportation control plans (TCPs) for the major urban areas in the State. EPA announced receipt and availability of these SIP revisions on March 14, 1980 (45 FR 16504). On August 4 and August 8, 1980 the State submitted to EPA additional information on the transportation control plan (TCP) for Niles, Michigan, a portion of the South Bend, Indiana urbanized area. As defined by the U.S. Bureau of the Census in 1970, this area includes the urbanized portions of Cass and Berrien Counties. EPA approved the State's hydrocarbon control strategy for stationary sources in the May 6, 1980 Federal Register (45 FR 29790). In this notice, EPA takes final action to approve the TCP and the ozone attainment demonstration.

On October 28, 1980 (45 FR 71379), EPA proposed approval of the ozone control strategy and transportation control plan for the urbanized areas of Cass and Berrien Counties, Michigan. At that time, EPA solicited public comment on the revision to the Michigan SIP and on EPA's proposed approval. Two comments were received. One comment supported EPA's proposed rulemaking action. The other commentor was concerned about air quality in the Niles area.

Comment: Petroleum storage tanks in the Niles area are polluting the air with unburned hydrocarbons. These emissions will not be controlled until 1983.

EPA Response: Michigan has adopted a regulation which requires the implementation of reasonable available control technology (RACT) on petroleum storage tanks throughout the State. The

schedule requires the phasing-in of control measures with final compliance as expeditiously as possible but no later than December 31, 1982. Their schedule meets all applicable Clean Air Act requirements and the State has demonstrated that sufficient emission reductions will be achieved in the Niles area to demonstrate attainment of the ozone standard by the statutory deadline.

Strategy	Implementors
Ridesharing Activities—Car-pool demonstration.	Southwestern Michigan Regional Planning Commission.
Transit Improvements—Increase Niles Dial-A-Ride.	Niles Dial-A-Ride.
Traffic Flow Improvements Highway and traffic projects:	
17th Street (widening)	City of Niles.
Bertrand Road (bridge reconstruction).	Berrien County.
Lake Street (widening)	Cass County.
U.S. Route 33 (resurfacing)	Michigan Department of Transportation.
MI-61 (resurfacing)	Michigan Department of Transportation.

EPA's review of the Michigan submittal concluded that the transportation control plan and the attainment demonstration portions of the control strategy satisfy all of the nine requirements for an approvable non-attainment area SIP, as summarized in EPA's notice of proposed rulemaking on October 28, 1980 (45 FR 71379). The State has shown that sufficient emission reductions will be achieved to demonstrate attainment of the ozone standard by 1982. The transportation control plans, taken in conjunction with stationary source RACT requirements in Michigan, represent an acceptable ozone control strategy for the Niles urban area. Therefore, EPA takes final action to approve the transportation control plan and the ozone attainment demonstration for the urbanized areas of Cass and Berrien Counties, Michigan. EPA 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 Clean Air Act will be lifted from the Niles area.

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 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.