

listed in § 133.175; pasteurized cheese spread with fruits, vegetables, or meats as defined in § 133.176; pasteurized process cheese spread as defined in § 133.179; pasteurized process cheese spread with fruits, vegetables, or meats as defined in § 133.180 of this chapter.

(d) The ingredient is used at levels not to exceed good manufacturing practice in accordance with § 184.1(b)(1) of this chapter. The current good manufacturing practice level is the quantity of the ingredient that delivers a maximum of 250 parts per million of nisin in the finished product as determined by the British Standards Institution Methods, "Methods for the Estimation and Differentiation of Nisin in Processed Cheese," BS 4020 (1974), which is incorporated by reference. Copies are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, RM, 4-62, 5600 Fishers Lane, Rockville, MD 20857, or available for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

Dated: March 25, 1988.

Richard J. Ronk,
Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-7459 Filed 4-5-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR PART 558

New Animal Drugs for Use in Animal Feeds; Lasalocid and Oxytetracycline; Correction

AGENCY: Food and Drug Administration.
ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoffman-La Roche, Inc., providing for the safe and effective use of a Type C cattle feed manufactured from separately approved lasalocid sodium and oxytetracycline (monoalkyl trimethyl ammonium salt) Type A articles [52 FR 48095; December 18, 1987]. The supplementary information in the final rule inadvertently omitted the approved level of 100-gram-per-pound oxytetracycline (monoalkyl trimethyl ammonium salt). This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: In FR Doc 87-29036, appearing on page 48095 in the Federal Register of Friday, December 18, 1987 [52 FR 48095], in the second column under the heading "Supplementary Information" in the ninth line, the phrase "10- or 50-" should read "10-, 50-, or 100-".

Dated: March 31, 1988.

Richard A. Carnevale,
Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-7525 Filed 4-5-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 800, 803, 807, 808, 809, 812, 813, 820, 860, 861, 864, 866, 876, 895, 1002, 1005, 1010, 1020, 1030, 1040, and 1050

[Docket No. 87N-0373]

Medical Device and Radiological Health Regulations; Editorial Amendments

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending certain of its regulations on medical device and radiological health to correct cross-references and typographical errors and to update the titles and mailing symbols of certain organizational units. This action will improve the accuracy and clarity of the regulations.

EFFECTIVE DATE: April 6, 1988.

FOR FURTHER INFORMATION CONTACT: T. Rada Proehl, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: FDA is revising certain of its regulations on medical devices and radiological health to correct cross-references and typographical errors, to update the titles and mailing symbols of certain organizational units, and to clarify the regulations. The affected regulations are 21 CFR 800.12(c) (the second time it appears), 803.33(b), 807.22(a), 807.35(b), 807.37 (a) and (b)(2), 807.90(a), 807.95(c)(1), 808.87(a), 809.5(a) (1), (2), (3), and (4) and (b), 812.2(e), 812.19, 812.20 (b)(9) and (d), 812.38(d), 813.20(a), 813.38 (b) and (c), 813.119(e)(2), 813.160, the introductory text of paragraph (a), 820.1(d), 820.3(f), 860.7(g)(4), 860.123(b)(1), 861.32 (b) and (c)(5), 864.9050(a), 864.9160(a), 866.5240(a), 866.5890(a), 876.5830(a), 895.21(d)(1), 1002.7, 1002.10, text of the introductory paragraph, 1002.20(a), the introductory text of paragraph (b), and (b)(5),

1002.31(c), 1002.41(a)(1), 1002.50, the introductory text of paragraph (a) and (b), 1002.51, 1005.11, 1005.25 (b) and (c), 1010.2 (c) and (d), 1010.3 (a)(1) and (2)(i), (b), and (c), 1010.4, the introductory text of paragraph (a), (b)(1)(viii), and (c) (1) and (3), 1010.5, the introductory text of paragraph (a), (b), (c)(12), and (e) (1) and (2), 1010.13, 1020.30 (c), (d), and (d)(3)(ii), 1020.32(a)(1), 1030.10(c) (4)(iv), (5)(iv), and (6)(iii), the introductory text of (c)(6)(iv), and (c)(6)(iv)(d), 1040.30(c)(1)(ii), and 1050.10(d)(5).

Because these amendments are nonsubstantive, notice and public procedure and delayed effective date are unnecessary (5 U.S.C. 553 (b)(B) and (d)).

List of Subjects

21 CFR Part 800

Administrative practice and procedure, Medical devices, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 803

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 808

Intergovernmental relations, Medical devices.

21 CFR Part 809

Labeling, Medical devices.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 813

Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 820

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 860

Administrative practice and procedure, Medical devices.

21 CFR Part 861

Administrative practice and procedure, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 864

Blood, Biologics, Laboratories, Medical devices, Packaging and containers.

21 CFR Part 866

Blood, Biologics, Laboratories, Medical devices.

21 CFR Part 876

Medical devices.

21 CFR Part 895

Administrative practice and procedure, Labeling, Medical devices.

21 CFR Part 1002

Electronic products, Radiation protection, Reporting and recordkeeping requirements.

21 CFR Part 1005

Administrative practice and procedure, Electronics products, Imports, Radiation protection, Surety bonds.

21 CFR Part 1010

Administrative practice and procedure, Electronic products, Exports, Radiation protection.

21 CFR Part 1020

Electronic products, Medical devices, Radiation protection, Television, X-Rays.

21 CFR Part 1030

Electronic products, Microwave ovens, Radiation protection.

21 CFR Part 1040

Electronic products, Lasers, Medical devices, Radiation protection.

21 CFR Part 1050

Electronic products, Sonic, Infrasonic, and Ultrasonic products, Medical devices, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Radiation Control for Health and Safety Act of 1968, and under authority delegated to the Commissioner of Food and Drugs, Parts 800, 803, 807, 808, 809, 812, 813, 820, 860, 861, 864, 866, 876, 895, 1002, 1005, 1010, 1020, 1030, 1040, and 1050 are amended as follows:

PART 800—GENERAL

1. The authority citation for 21 CFR Part 800 is revised to read as follows and the authority citations following all the sections in Part 800 are removed:

Authority: Secs. 201(n), 304, 501, 502, 505, 506, 507, 515, 519, 521, 601, 602, 701 (21 U.S.C. 321(n), 334, 351, 352, 355, 356, 357, 360e, 360i, 360k, 361, 362, 371).

§ 800.12 [Amended]

2. Section 800.12 *Contact lens solutions and tablets; tamper-resistant packaging* is amended by removing paragraph (c) the second time it appears.

PART 803—MEDICAL DEVICE REPORTING

3. The authority citation for 21 CFR Part 803 continues to read as follows:

Authority: Secs. 502(t), 510, 519, 701(a), 704 (a) and (e), 52 Stat. 1055, 76 Stat. 792-795 as amended, 90 Stat. 564-565, 578, 581 (21 U.S.C. 352(t), 360, 360i, 371(a), 374 (a) and (e)).

§ 803.33 [Amended]

4. Section 803.33 *Where to submit a report* is amended in paragraph (b) by revising "Device Monitoring Branch" to read "Product Monitoring Branch".

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS OF DEVICES

5. The authority citation for 21 CFR Part 807 continues to read as follows:

Authority: Secs. 301(p), 501, 502, 510, 513, 701(a), 52 Stat. 1049-1051 as amended, 1055, 76 Stat. 794-795 as amended, 86 Stat. 462 as amended, 90 Stat. 540-546 (21 U.S.C. 331(p), 351, 352, 360, 360c, 371(a)); 21 CFR 5.10.

§ 807.22 [Amended]

6. Section 807.22 *How and where to register establishments and list devices* is amended in paragraph (a) by revising "Bureau of Medical Devices (HFK-124)" to read "Center for Devices and Radiological Health (HFZ-342)".

§ 807.35 [Amended]

7. Section 807.35 *Notification of registrant* is amended in paragraph (b) by revising "Bureau of Biologics" and "Bureau of Drugs" to read "Center for Biologics Evaluation and Research" and "Center for Drug Evaluation and Research", respectively, everywhere they appear.

§ 807.37 [Amended]

8. Section 807.37 *Inspection of establishment registration and device listings* is amended in paragraphs (a) and (b)(2) by revising "Bureau of Medical Devices (HFK-124)" to read "Center for Devices and Radiological Health (HFZ-342)".

§ 807.90 [Amended]

9. Section 807.90 *Format of a premarket notification submission* is amended in paragraph (a) by revising "Bureau of Medical Devices (HFK-20)" to read "Center for Devices and Radiological Health (HFZ-401)".

§ 807.95 [Amended]

10. Section 807.95 *Confidentiality of information* is amended in paragraph (c)(1) by revising "§ 807.87(g)" to read "§ 807.87(h)".

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

11. The authority citation for 21 CFR Part 808 continues to read as follows:

Authority: Secs. 521, 701, 52 Stat. 1055-1056 as amended, 90 Stat. 574 (21 U.S.C. 360k, 371); 21 CFR 5.10.

§ 808.87 [Amended]

12. Section 808.87 *Oregon is amended* in paragraph (a) by revising "§ 801.420(a)(b)" to read "§ 801.420(a)(6)".

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

13. The authority citation for 21 CFR Part 809 continues to read as follows:

Authority: Sec. 701, 52 Stat. 1055-1056 as amended (21 U.S.C. 371).

§ 809.5 [Amended]

14. Section 809.5 *Exemption from batch certification requirements for in vitro antibiotic susceptibility devices subject to section 507 of the act* is amended in paragraphs (a) (1), (2), (3), and (4) and (b) by removing "Form 5 or Form 6".

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

15. The authority citation for 21 CFR Part 812 continues to read as follows:

Authority: Secs. 301, 501, 502, 520, 701(a), 702, 704, 801, 52 Stat. 1042-1043 as amended, 1049-1051 as amended, 1055, 1056-1058 as amended, 67 Stat. 476-477 as amended, 90 Stat. 565-574 (21 U.S.C. 331, 351, 352, 360j, 371(a), 372, 374, 381); 21 CFR 5.10.

§ 812.2 [Amended]

16. Section 812.2 *Applicability* is amended in paragraph (e) by revising "investigational new drug exemption" to read "investigational new drug application".

§ 812.19 [Amended]

17. Section 812.19 *Address for IDE correspondence* is amended by revising "Bureau of Medical Devices, Document Control Center (HFK-20)" to read "Center for Devices and Radiological Health, Document Mail Center (HFZ-401)".

§ 812.20 [Amended]

18. Section 812.20 *Application* is amended in paragraph (b)(9) by

removing "of this chapter" each time it appears and amended in paragraph (d) be revising "Bureau of Medical Devices" to read "Center for Devices and Radiological Health".

§ 812.38 [Amended]

19. Section 812.38 *Confidentiality of data and information* is amended in paragraph (d) by revising "§ 314.14" to read "§ 814.9" and removing the remainder of the sentence.

PART 813—INVESTIGATIONAL EXEMPTIONS FOR INTRAOCULAR LENSES

20. The authority citation for 21 CFR Part 813 continues to read as follows:

Authority: Secs. 301, 501, 502, 520, 701, 704, 801, 52 Stat. 1042-1043 as amended, 1049-1051 as amended, 1055, 90 Stat. 567, 569-571, 576-578 (21 U.S.C. 331, 351, 352, 360j, 371, 374, 381).

§ 813.20 [Amended]

21. Section 813.20 *Application* is amended in paragraph (a) by revising "Bureau of Medical Devices, Document Control Center (HFK-20)" to read "Center for Devices and Radiological Health Document Mail Center (HFZ-401)".

§ 813.38 [Amended]

22. Section 813.38 *Confidentiality of data and information in an application* is amended in paragraph (b) by revising "§ 314.14" to read "§ 814.9" and removing the remainder of the sentence, and in paragraph (c) by revising "§ 314.14" to read "§ 814.9".

§ 813.119 [Amended]

23. Section 813.119 *Disqualification of a clinical investigator* is amended in paragraph (e)(2) by revising "paragraph (c)(1) of this section" to read "paragraph (d)(1) of this section".

§ 813.160 [Amended]

24. Section 813.160 *Conditions of exemption* is amended in the introductory text of paragraph (a) by revising "§ 813.1(c)" to read "§ 813.1(b)".

PART 820—GOOD MANUFACTURING PRACTICE FOR MEDICAL DEVICES: GENERAL

25. The authority citation for 21 CFR Part 820 continues to read as follows:

Authority: Secs. 501, 502, 518, 519, 520(f), 701(a), 52 Stat. 1049-1051 as amended, 1055, 90 Stat. 562-569 (21 U.S.C. 351, 352, 360h, 360j, 360j(f), 371(a)).

§ 820.1 [Amended]

26. Section 820.1 *Scope* is amended in paragraph (d) by revising "Bureau of Medical Devices, Division of Compliance

Programs, Industry Programs Branch (HFK-132)" to read "Center for Devices and Radiological Health, Division of Compliance Programs, Manufacturing Quality Assurance Branch (HFZ-332)".

§ 820.3 [Amended]

27. Section 820.3 *Definitions* is amended in paragraph (f) by revising "Bureau of Medical Devices" to read "Center for Devices and Radiological Health".

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

28. The authority citation for 21 CFR Part 860 continues to read as follows:

Authority: Secs. 513, 514, 515, 519, 520, and 701(a), 52 Stat. 1055, 90 Stat. 540-559, 564-574 (21 U.S.C. 360c, 360d, 360e, 360i, 360j, and 371(a)).

§ 860.7 [Amended]

29. Section 860.7 *Determination of safety and effectiveness* is amended in paragraph (g)(4) by revising "Bureau of Medical Devices" to read "Center for Devices and Radiological Health".

§ 860.123 [Amended]

30. Section 860.123 *Reclassification petition: Content and form* is amended in paragraph (b)(1) by revising "Bureau of Medical Devices, Document Control Center (HFK-20)" to read "Center for Devices and Radiological Health, Document Mail Center (HFZ-401)".

PART 861—PROCEDURES FOR PERFORMANCE STANDARDS DEVELOPMENT

31. The authority citation for 21 CFR Part 861 continues to read as follows:

Authority: Secs. 501, 502, 513, 514, 701, 52 Stat. 1049-1051 as amended, 1055-1056 as amended, 90 Stat. 540-552 (21 U.S.C. 351, 352, 360, 360d, 371).

§ 861.32 [Amended]

32. Section 861.32 *Contribution by the Food and Drug Administration to the cost of developing a proposed standard* is amended in paragraph (b) by revising "41 CFR Parts 1-15 of the Federal procurement regulations" to read "48 CFR Parts 1 through 51 of the Federal Acquisition Regulations System" and in paragraph (c)(5) by revising "or 41 CFR Parts 1-15 of the Federal procurement regulations" to read "of 48 CFR Parts 1 through 51 of the Federal Acquisition Regulations System".

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

33. The authority citation for 21 CFR Part 864 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

§ 864.9050 [Amended]

34. Section 864.9050 *Blood bank supplies* is amended in paragraph (a) by revising "Bureau of Biologics" to read "Center for Biologics Evaluation and Research".

§ 864.9160 [Amended]

35. Section 864.9160 *Blood group substances of nonhuman origin for in vitro diagnostic use* is amended in paragraph (a) by revising "Bureau of Biologics" to read "Center for Biologics Evaluation and Research".

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

36. The authority citation for 21 CFR Part 866 continues to read as follows:

Authority: Secs. 501(f) 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

§ 866.5240 [Amended]

37. Section 866.5240 *Complement components immunological test system* is amended in paragraph (a) by revising "C_{1q}" to read "C_{1q}".

§ 866.5890 [Amended]

35. Section 866.5890 *Inter-alpha trypsin inhibitor immunological test system* is amended in paragraph (a) by revising the word "inter-alpha" in the second sentence to read "inter-alpha".

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

36. The authority citation for 21 CFR Part 876 continues to read as follows:

Authority: Secs. 501(f) 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

§ 876.5830 [Amended]

34. Section 876.5830 *Hemodialyzer with disposable insert (kiil type)* is amended in paragraph (a) by revising "§ 897.5820" to read "§ 876.5820".

PART 895—BANNED DEVICES

41. The authority citation for 21 CFR Part 895 continues to read as follows:

Authority: Secs. 502(r) 516, 518, 519, 701(a), 52 Stat. 1055, 90 Stat. 560, 562-565, 577-578 (21 U.S.C. 352(r), 360f, 360h, 360i, 371).

§ 895.21 [Amended]

34. Section 895.21 *Procedures for banning a device* is amended in paragraph (d)(1) by revising "§ 875.30" to read "§ 895.30".

PART 1002—RECORDS AND REPORTS

36. The authority citation for 21 CFR Part 1002 continues to read as follows:

Authority: Sec. 360A, 82 Stat. 1182-84; 42 U.S.C. 263i, 263j.

§ 1002.7 [Amended]

44. Section 1002.7 *Submission of data and reports* is amended by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health" everywhere it appears in this section.

§ 1002.10 [Amended]

45. Section 1002.10 *Initial reports* is amended in the text of the introductory paragraph by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

§ 1002.20 [Amended]

46. Section 1002.20 *Reporting of accidental radiation occurrences* is amended in paragraph (a), the introductory text of paragraph (b), and paragraph (b)(5) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

§ 1002.31 [Amended]

47. Section 1002.31 *Preservation and inspection of records* is amended in paragraph (C) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

§ 1002.41 [Amended]

48. Section 1002.41 *Disposition of records obtained by dealers and distributors* is amended in paragraph (a)(1) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

§ 1002.50 [Amended]

49. Section 1002.50 *Special exemptions* is amended in the introductory text of paragraph (a) and in paragraph (b) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

§ 1002.51 [Amended]

50. Section 1002.51 *Exemptions for manufacturers of products intended for the U.S. Government* is amended by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

PART 1005—IMPORTATION OF ELECTRONIC PRODUCTS

51. The authority citation for 21 CFR Part 1005 continues to read as follows:

Authority: Secs. 215, 356, 58 Stat. 690, 82 Stat. 1174; 42 U.S.C. 216, 263d.

§ 1005.11 [Amended]

52. Section 1005.11 *Payment for samples* is amended by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

§ 1005.25 [Amended]

53. Section 1005.25 *Service of process on manufacturers* is amended in paragraphs (b) and (c) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

54. The authority citation for 21 CFR Part 1010 continues to read as follows:

Authority: Sec. 358, 82 Stat. 1177; 42 U.S.C. 263f.

§ 1010.2 [Amended]

55. Section 1010.2 *Certification* is amended in paragraphs (c) and (d) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

§ 1010.3 [Amended]

56. Section 1010.3 *Identification* is amended in paragraphs (a)(1) and (2)(i), (b), and (c) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

§ 1010.4 [Amended]

57. Section 1010.4 *Variances* is amended in the introductory text of paragraph (a) and paragraphs (b)(1)(viii) and (c) (1) and (3) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

§ 1010.5 [Amended]

58. Section 1010.5 *Exemptions for products intended for United States Government use* is amended in the introductory text of paragraph (a) and in paragraphs (b), (c)(12), and (e) (1) and (2) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

§ 1010.13 [Amended]

59. Section 1010.13 *Special test procedures* is amended by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

60. The authority citation for 21 CFR Part 1020 continues to read as follows:

Authority: Sec. 358, 82 Stat. 1177-1179; 42 U.S.C. 263f.

§ 1020.30 [Amended]

61. Section 1020.30 *Diagnostic x-ray systems and their major components* is amended in paragraph (c) by revising "Bureau of Radiological Health" and "Division of Compliance of that Bureau" to read "Center for Devices and Radiological Health" and "Office of Compliance of that Center", respectively, in paragraph (d) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health", and in paragraph (d)(3)(ii) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

§ 1020.32 [Amended]

62. Section 1020.32 *Fluoroscopic equipment* is amended in paragraph (a)(1) in the last sentence by revising "§ 1020.32(h)(1)(i)" to read "§ 1020.30(h)(1)(i)".

PART 1030—PERFORMANCE STANDARDS FOR MICROWAVE AND RADIO FREQUENCY EMITTING PRODUCTS

63. The authority citation for 21 CFR Part 1030 is revised to read as follows:

Authority: Sec. 358 (42 U.S.C. 263f); sec. 701(a) (21 U.S.C. 371(a)).

§ 1030.10 [Amended]

64. Section 1030.10 *Microwave ovens* is amended in paragraphs (c)(4)(iv), (5)(iv), and (6)(iii), the introductory text of paragraph (c)(6)(iv), and paragraph (c)(6)(iv)(d) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

PART 1040—PERFORMANCE STANDARDS FOR LIGHT-EMITTING PRODUCTS

65. The authority citation for 21 CFR Part 1040 continues to read as follows:

Authority: Secs. 358, 360A, 82 Stat. 1177-1179, 1182 (42 U.S.C. 263f, 263i); 21 CFR 5.10.

§ 1040.30 [Amended]

66. Section 1040.30 *High-intensity mercury vapor discharge lamps* is amended in paragraph (c)(1)(ii) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

PART 1050—PERFORMANCE STANDARDS FOR SONIC, INFRASONIC, AND ULTRASONIC RADIATION-EMITTING PRODUCTS

67. The authority citation for 21 CFR Part 1050 is revised to read as follows:

Authority: Sec. 358 (42 U.S.C. 263f).

§ 1050.10 [Amended]

68. Section 1050.10 *Ultrasonic therapy products* is amended in paragraph (d)(5) by revising "Bureau of Radiological Health" to read "Center for Devices and Radiological Health".

Dated: March 17, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-7526 Filed 4-5-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Parts 1204 and 1205

[NHTSA Docket No. 81-12; Notice 5]

Uniform Standards for State Highway Safety Programs; Determination of Effectiveness

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: On April 2, 1987, Congress enacted the Surface Transportation and Uniform Relocation Assistance Act of 1987. Section 206(d) of the Act, amending 23 U.S.C. 402(j), requires the Secretary to begin a rulemaking process to determine those programs most effective in reducing accidents, injuries, and deaths and to amend 23 CFR Part 1205 accordingly. Pursuant to the Act, the National Highway Traffic Safety Administration and the Federal Highway Administration published a joint Notice of Proposed Rulemaking (52 FR 33422) on September 3, 1987 and held three public hearings to solicit public comments. In this final rule, the agencies have determined that, in addition to the original six National Priority program areas, Motorcycle Safety is also among those programs that should be included as one of the "most effective" programs. It therefore will be eligible for Federal funding under expedited review

procedures of the State and Community Highway Safety Grant Program (23 U.S.C. 402). This final rule amends the agencies' regulations accordingly, and also replaces the terms "standard" and "standards" with the words "guideline" and "guidelines" in Part 1204 of the agencies' joint regulation, 23 CFR Part 1204, pursuant to section 206(a) of the Act.

DATES: The amendments made by this final rule are effective on October 1, 1988.

FOR FURTHER INFORMATION CONTACT:

In NHTSA: Mr. Robert M. Nicholson, Traffic Safety Programs, Room 5125, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-1755; or Ms. Heidi L. Coleman, Office of Chief Counsel, National Highway Traffic Safety Administration, telephone (202) 366-1834.

In FHWA: Mr. Howard Hanna, Office of Highway Safety, Room 3407, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2131; or Mr. Thomas Holian, Office of Chief Counsel, Federal Highway Administration, telephone (202) 366-1350.

SUPPLEMENTARY INFORMATION: On April 2, 1987, the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, was enacted by Congress. Section 206(d) of the Act, amending 23 U.S.C. 402(j), requires the Secretary to begin a rulemaking process to determine those programs most effective in reducing accidents, injuries, and deaths and to amend 23 CFR Part 1205 accordingly. Pursuant to the Act, the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) published a joint Notice of Proposed Rulemaking (NPRM) (52 FR 33422) on September 3, 1987 and held three public hearings to solicit public comments. These hearings were held in 1987 on September 29 in Washington, DC, on October 8 in Fort Worth, TX, and on October 14 in Lakewood, CO. In this final rule, the agencies have determined that the original six National Priority program areas continue to be most effective in reducing accidents, injuries and fatalities, and that Motorcycle Safety is also among the most effective programs and should be added to the list of National Priority program areas. It therefore will be eligible for Federal funding under expedited review procedures of the State and Community Highway Safety Grant Program (23 U.S.C. 402). This final rule amends the agencies' regulation accordingly.

Section 206(d) provides that if the final rule is promulgated by April 1, 1988, the rule shall take effect October 1, 1988. If the rule is promulgated on a later date, it shall take effect October 1, 1989. Since this final rule was promulgated by April 1, 1988, the rule shall take effect October 1, 1988.

Section 206(a) of the Act, amending 23 U.S.C. 402, replaces the terms "standard" and "standards" wherever they appear with the words "guideline" and "guidelines." This final rule amends Part 1204 of the agencies' joint regulation, 23 CFR Part 1204, to incorporate this change.

Background

The State and Community Highway Safety Grant Program (the 402 program) was established under the Highway Safety Act of 1966, 23 U.S.C. 402. The Act required the establishment of Uniform Standards for State Highway Programs to assist the States and local communities in organizing their highway safety programs.

In 1981, Congress passed the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, revising the section 403 program. The Act directed the agencies to conduct a rulemaking process to determine those State and local highway safety programs most effective in reducing accidents, injuries and fatalities.

On April 1, 1982, in accordance with section 1107(d) of the Omnibus Budget Reconciliation Act of 1981, NHTSA and FHWA issued a final rule (47 FR 15116) identifying the six program areas which the agencies then considered to be the most effective NHTSA and FHWA highway safety programs. Those program areas were determined to be National Priority program areas, and include—

NHTSA Program Areas:

- Occupant Protection
- Alcohol Countermeasures
- Police Traffic Services
- Emergency Medical Services
- Traffic Records

FHWA Program Area:

- Safety Construction and Operational Improvements

The April 1982 final rule provided that these National Priority program areas continue to be eligible for Federal funding under the 402 program, and established a mechanism by which additional programs identified by a State may be eligible for Federal funding in that State.

The rule provided for an expedited procedure for the funding of National Priority program areas. See, 23 CFR

1205.4. For the funding of other program areas, the rule permits States to select one or both of two procedures: Formal decisionmaking or problem identification. See, 23 CFR 1205.5(a) and (b).

On January 5, 1987, the Department submitted to Congress a legislative proposal to revise 23 U.S.C. 402. The Department's proposal provided for a periodic review of the effectiveness of the various programs eligible for funding under section 404 in reducing accidents, injuries and fatalities. The Department believed the periodic review procedure to be the best method for ensuring the continued relevance of the section 402 program to changing circumstances and traffic safety needs, and for ensuring that federal funds continue to be used in as cost effective a manner as possible. The proposal scheduled the first review to begin on September 1, 1987.

The legislative proposal also provided that the terms "standard" and "standards" wherever they appear be replaced with the words "guideline" and "guidelines." The purpose of this amendment was to conform the language of section 402 to the current implementation of the programs, pursuant to the 1982 determinations of program effectiveness under section 402(j). As a result of the section 402(j) determinations, the highway safety program standards have been maintained as non-binding guidelines for use by the States in their section 402 programs.

The substance of the Department's proposal was enacted by Congress as subsection 206(a) and (d) of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

On September 3, 1987, NHTSA and FHWA published a joint Notice of Proposed Rulemaking (NPRM) (52 FR 33422). The NPRM states that the agencies are considering "whether the six National Priority program areas identified in 1982 continue to be the most effective in reducing accidents, injuries and fatalities, and whether any emerging program areas should be added to the list of most effective programs." For example, the NPRM suggested that commenters address whether Motorcycle Safety, Pedestrian and Bicycle Safety, or other areas should be added to the list of National Priority program areas. The NPRM also proposed to amend Part 1204 of the agencies' joint regulations, to implement the statutory change replacing the terms "standard" and "standards" wherever they appear in section 402 with the words "guideline" and "guidelines." The agencies did not propose, in the NPRM,

any changes to the section 402 funding procedures.

The agencies also held three public hearings to solicit public comments. These hearings were held in 1987 on September 29 in Washington, DC, on October 8 in Fort Worth, TX, and on October 14 in Lakewood, CO.

We received a substantial number of responses to the NPRM. We received nearly 300 written comments to the docket, and heard testimony from 80 participants at the three hearings. The commenters included either the Governor, the Governor's Highway Safety Representative, the State Highway Safety Coordinator, or a designee of these officials representing 41 States, the District of Columbia, Guam and Puerto Rico. In the remainder of this notice, comments from any of these officials will be referred to as the State's comments. We also received written and oral comments from national organizations. Some of these organizations represent the interests of a particular program area, such as the American Trauma Society, Mid-Atlantic EMS Council and the National Association of State Emergency Medical Services Directors representing EMS, the League of American Wheelmen representing bicyclists, the American Driver and Traffic Safety Education Association representing driver education, and the Motorcycle Safety Foundation and American Motorcycle Association representing motorcyclists. Others represented broader highway safety interests, such as the National Association of Governors' Highway Safety Representatives (NAGHSR), National Sheriffs' Association, Insitute of Transportation Engineers (ITE), American Automobile Association (AAA), International Association of Chiefs of Police (IACP), Insurance Institute for Highway Safety (IIHS), National Safety Council (NSC), American Red Cross, American Insurance Association, Texas A&M University System, Highway Users Federation for Safety and Mobility (HUFSA), Northwestern University Traffic Institute, and Motor Vehicle Manufacturers Association (MVMA). In addition to these 41 States and national organizations, the commenters also included Senator John C. Danforth of Missouri, Congressman Vic Fazio of California, law enforcement agencies, educators, other State and local agencies, health and injury prevention centers, State and local groups and organizations, and interested individuals.

General Comments

(1) Specific Programmatic Comments

Many commenters describe projects and activities which have been funded under the section 402 program with success, or which they believe deserve to be funded in the future. Some respondents mention organizations which have been productive recipients of 402 grant funds, or which, given the opportunity in the future, could accomplish a great deal in the highway safety area with section 402 funds. Several comments are offered suggesting that a greater or smaller proportion of funds should be dedicated to certain National Priority program areas.

The agencies appreciate the many commenters who took the time to provide these thoughts, suggestions, and recommendations. They have been valuable and instructive on whether the agencies' messages are reaching the public and on new directions the public believes the agencies should take. Throughout this final rule, we will refer to these comments to illustrate points we wish to make or to provide examples of outstanding accomplishments or desired goals. However, due to the number of these comments and the fact that they address an area that is outside the scope of this proceeding, we do not address each one individually in this final rule. Specifically, decisions regarding the projects and activities to be supported with section 402 funds, the organizations to receive funding, and the percentage of funds that will be allocated to each program area (provided the State complies with statutory requirements, such as set asides), are all made by the States. We do not wish to limit the flexibility built into the funding process.

In response to these comments, the agencies would like to take this opportunity to briefly describe the section 402 funding process. The funding procedures for National Priority program areas were promulgated in the April 1982 final rule, and are codified in 23 CFR 1205.4. Subsection 1205.4(c) of that part provides that annually each State shall conduct an evaluation of its programs of the prior year, and shall describe the evaluation in its annual Highway Safety Plan (HSP). The specific requirements regarding preparation and submission of the Plan were published in the *Federal Register* on September 16, 1982 (and issued internally as joint NHTSA/FHWA order 960-2A/7510.3A dated June 10, 1983), and in a memorandum dated October 5, 1984.

Under the joint Order, the HSP must consist of three parts: Executive

Summary, Program Areas and Evaluation. The October 5, 1984 memorandum provides that "significant projects underway or completed" are to be reported in a separate document entitled the annual Noteworthy Project Reports.

For each National Priority program area, each State must include, in its HSP, a description of the highway safety problem, the countermeasures proposed or considered to decrease or stabilize the problem, and the kinds of data relied upon in making the problem and countermeasure identifications. It must also include a description of the criteria for project selection and, where applicable, the specific projects proposed to implement planned countermeasures, planned program accomplishments, and a brief description of how the evaluation for the program area will be conducted. Finally, each State must include a summary of programmed and obligated costs by program area. If the State's HSP conforms with statutory and other Federal requirements, it will be approved for Federal funding. After approval of the HSP, section 402 funds are then obligated to these States. The Governor of the State is responsible for the administration of the program through a State highway safety agency (the Governor's Highway Safety Representative, also referred to as the Governor's Representative).

Several commenters suggest new directions they believe the agencies should take to improve highway safety generally. Those comments which are outside the scope of this rulemaking action have not been addressed in this final rule.

(2) National Priority Program Area Concept

Several commenters offer objections to the National Priority program area concept. Four commenters suggest returning instead to the concept of emphasizing all 18 standards (or guidelines). The Governor's Representative of North Carolina, for example, states that although North Carolina believes "that the 'six pack' can meet the overall needs of the States in addressing their primary highway safety concern," it also believes "flexibility currently in the rules must be expanded to allow States to move out of the 'six pack' and address the remaining * * * standards." Other commenters emphasize the need for a "comprehensive systems approach," which some argue the "18 standards [or guidelines] concept" would provide. While it does not go as far as these other commenters, the National Safety

Council (NSC) shares some of their concerns. NSC supports the six emphasis areas, and agrees that they "certainly encompass many of the major traffic safety countermeasure programs." However, it suggests that "they by themselves have fractionalized the total national traffic safety effort * * *. The NSC urges the agencies to address traffic safety needs in a comprehensive manner."

As stated previously, in 1981, Congress passed the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, which directed the agencies to conduct a rulemaking process to determine those State and local highway safety programs most effective in reducing accidents, injuries and fatalities. Pursuant to that mandate, NHTSA and FHWA identified six National Priority program areas which would continue to be eligible for Federal funding under the 402 program. These areas are eligible for funding under an expedited procedure (see, 23 CFR 1205.4), while nonemphasis areas can only be funded in a particular State under formal decisionmaking or problem identification procedures followed by that State (23 CFR 1205.5 (a) and (b)).

To ensure that Federal funds continue to be used in as cost effective a manner as possible, and respond to changes in circumstances and traffic safety needs, on April 2, 1987, Congress passed the Surface Transportation and Uniform Relocation Assistance Act of 1987. Section 206(d) of the Act requires the agencies to conduct again a rulemaking process to determine those programs most effective in reducing accidents, injuries and fatalities. Efforts to abandon the National Priority program area concept in favor of returning to the 18 standards (or guidelines) at this time would be in contravention of our Congressional mandate. In addition, the agencies strongly believe that the current approach has the greatest impact on highway safety. By emphasizing areas of national concern for which proven effective countermeasures are available, while permitting States to receive funding for additional areas of local concern under established funding procedures, the program is designed to ensure that section 402 resources are being allocated in the most effective manner.

The vast majority of commenters addressing this issue provide strong support for the National Priority program area concept, and the 402 program in general. Missouri's comments are representative, "It is the experience from Missouri's Highway Safety Program that the improvement in Highway Safety in our State [its death

rate dropped from 6.2 to 2.4 fatalities per 100 million vehicle miles traveled] can be directly attributed to the '402' program and the six National Priority program areas identified in 1982."

The commenters highlight varied reasons for their support. Some emphasize that by identifying certain areas as National Priority program areas, the agencies enable the States to focus their attention on the programs that are most effective. According to New Jersey's Department of Transportation, for example, its efforts, as well as those of other States, "are for all practical purposes totally influenced by the listed priority program areas." Another commenter puts it, "Priority program areas are more than guidelines. In essence they are the highway safety program's shared mission, the platform for which we all rally." In this way, the comments reflect the importance of the agencies' leadership role in these most effective areas.

Other commenters indicate that the identification of priority areas, and the national emphasis placed on these areas, act as a catalyst at the State and local level. This, combined with the 402 funds provided, they say, attract State, local or private funding, volunteer and public support, and ultimately may lead to the self-sufficiency of programs. Several excellent examples were described in testimony. Mr. Ray Taber of Louisiana Child Passenger Safety, for example, explained that section 402 funds have attracted volunteers and in-kind grants from the private sector, which have helped his organization to develop a successful child safety seat loaner program with only one paid staff member and limited funds. Captain William Collins of the Hurst Police Department explained that as a result of STEP (Selective Traffic Enforcement Program) grant, fatalities dropped so dramatically that the city has indicated it intends to pick up the cost for the program's continuation. Hurst is a suburban community of approximately 40,000 people in Tarrant County, TX, located in the mid-cities area between Dallas and Fort Worth.

Other benefits cited in the comments which are attributed to the National Priority program area concept and the section 402 program in general, include the expansion of successful local programs in these areas statewide and the increased professionalism in the traffic safety field throughout the nation.

Finally, as will be discussed in greater detail below (under the heading Non-Emphasis Areas), the agencies as well as the vast majority of commenters addressing this issue, believe the

National Priority program area concept and the procedures established in 1982 to permit funding of non-emphasis areas, provide sufficient flexibility to the States for designing their highway safety programs. In fact, States which identify significant problems outside the priority areas, for which there are effective countermeasures available, are encouraged to allocate 402 dollars to address their local problems. For example, pedestrian safety projects, activities addressing elderly and youth problems, or certain commercial motor vehicle safety projects may be funded in this manner. In addition, the current format of the 402 program is not intended to prevent a comprehensive approach. Although each priority area is listed separately, the agencies strongly encourage those in the highway safety community to embrace the various areas of highway safety, and address them in projects which take a "holistic and integrated approach," as suggested by the Governor's Representative of Missouri. This can be accomplished most effectively, the agencies believe, at the community level.

(3) Comprehensive Community Based Programs

A number of commenters, including States, national organizations (such as NSC, ITE and Northwestern University Traffic Institute), and project level organizations, express a need to foster comprehensive highway safety activities. A comprehensive approach, the commenters explain, is best achieved by adopting effective countermeasures which address more than one specific priority program area. The Governor's Representative for Missouri says the goal is to have " * * * integrated community and state Highway Safety Programs using all of the very effective priority areas."

In addition to recommending that multiple countermeasures be used in an integrated manner, commenters propose that community based programs should be designed based on local needs and problems. For example, the Tidewater Automobile Association of Virginia supports "community-based programs which provide an option for municipalities to deal with local problem areas," with implementation through "coalition groups formed to include representatives of government and the private sector so that they can work in a cohesive manner on such programs * * *"

The agencies believe comprehensive community based programming represents the natural maturation of the 402 program, growing from a focus on single countermeasures to a process of

integrating countermeasures in appropriate program areas to respond, in a coordinated manner, to State and local highway safety needs and problems. We view the development and implementation of comprehensive community based highway safety programs as a process for responding to a range of highway safety problems identified in each locality.

A project conducted recently in Illinois will illustrate how this process has worked. The Fulton County Health Department designed an occupant protection project to increase safety belt usage through education activities. During this project, safety belt usage increased from 25 percent to 51 percent. Because local data showed that one-third of all traffic deaths were attributable to alcohol, this local project expanded its safety belt education program to include an alcohol component.

The agencies consider community involvement to be essential for the success of comprehensive community based programs. We believe the strength of these programs derives largely from the support and commitments provided by a broad base of public and private community leaders. These leaders can bring their individual positions, talents and resources to bear on local highway safety problems. Many commenters, discussing this and other issues, endorse the use of coalitions and advisory committees as effective tools for attracting leaders from diverse backgrounds and for facilitating the integration of varied concerns regarding multiple highway safety issues. This type of cooperative effort can result in the development and execution of a focused and coordinated approach. We encourage communities to work with their State Governor's Representative for Highway Safety, who can assist in assessing local highway safety problems and can recommend countermeasures and programs to effectively address their problems.

The Governor's Representative for New Jersey recommends that we create a new priority area for "coordinated or integrated highway safety programs at the local level." The State Highway Safety Coordinator for North Dakota supports increased emphasis for comprehensive community programs, but to a lesser degree than is afforded to priority programs. The agencies strongly encourage the use of comprehensive community based programs, but we do not believe it is necessary to establish a new priority program area for these activities. We believe the current

procedures provide sufficient flexibility to allow the creation of these programs within the existing framework. The State of Texas, for example, notes in its comments that it has included an "integrated community program" module in its FY88 Highway Safety Plan. The agencies encourage the States to develop such programs, and include them in future HSP's. In the event that a community program includes a non-emphasis area component, justification must be submitted in accordance with funding procedures, which are described below in the discussion entitled Non-Emphasis Areas. The agencies' regional and field staff will, as always, be available to provide the States with assistance.

National Priority Program Areas

The agencies have determined that the six program areas identified in the April 1982 final rule continue to be of national concern, that effective countermeasures have been developed in these areas which address these concerns, and that State programs in these areas appear to be the most effective in reducing accidents, injuries and fatalities. The commenters were unified in their support of these areas' continuation. Alaska's comments are representative:

Each program area represents an essential cornerstone that provides the foundation of a comprehensive statewide highway safety program. But, like the foundation of a building, the omission of any one of these cornerstones will weaken the entire structure.

We have also determined that Motorcycle Safety has emerged as a program area of national concern, and that several countermeasures exist in this area which have proven to be effective. We believe that this program area should be included among those that are considered "most effective" in reducing accidents, injuries and fatalities. Accordingly, we have decided to add Motorcycle Safety to the list of National Priority program areas.

As authorized by section 206(d) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, the agencies may revise their determination from time to time under a rulemaking process. To ensure that Federal funds continue to be used in as cost effective a manner as possible and that we are responding to changing circumstances and traffic safety needs, we intend to periodically review our list of National Priority program areas.

NHTSA-Administered Program Areas**(1) Occupant Protection**

The agencies received no comments suggesting that the area of Occupant Protection be deleted from the list of National Priorities. Commenters specifically addressing this area included States, law enforcement and other State and local agencies, special interest groups and individuals. All recommend that it be continued as a priority area and, in fact, some indicate that they consider it to have been the most effective program area in the designated group.

The agencies have decided that Occupant Protection should continue to be included in the list of National Priority program areas. Our decision is based on a finding that Occupant Protection continues to be an area of national concern, and that countermeasures exist in this area which have proven to be effective.

Strong gains have been made during the 1980's, including passage (or upgrading) of child safety seat usage laws in every State, passage of safety belt laws in a majority of States and significant increases in safety belt and child safety seat usage rates. According to the agency's 19 cities surveys, safety belt use for drivers has increased from 11.3% in December 1982 to 43.2% in September 1987, and child safety seat use has increased from 22.8% in December 1982 to 77.6% in June 1987. Despite these gains, it is clear that the commenters believe that occupant protection will continue to be a major highway safety concern in the future. NAGHSR states that it "and other organizations have joined together to campaign for a nationwide use rate of at least 70% by the year 1990, so there is still much to gain by continuing the program's emphasis in this area." In addition, some commenters emphasize also the continuing need to educate the public on the proper use of child safety seats, and the need to address the lower safety belt usage rates among certain age groups. The agencies believe that public information and education efforts in support of safety belt and child safety seat laws have proven to be effective in reducing injuries and fatalities.

The commenters suggest that the increases in usage throughout the country indicate that countermeasures have been effective in this area. In addition to the passage of occupant protection legislation, the countermeasures cited as being effective include the following: Comprehensive community occupant protection programs, which include increased enforcement efforts combined with

public information and education activities, incentives, observational surveys of belt use, and evaluation; child safety seat loaner programs; targeted audience programs for elementary and secondary schools, employers, health professionals, or senior citizens, for example; enforcement efforts which are coupled with public information and education activities; police and judicial training; and other activities which focus primarily on public information and education, and may include use of mass media, the Seat Belt Convincer (a device designed to "convince" people to buckle up) and appearances by "Vince and Larry" (the crash dummy characters created and adopted to convey the agencies' safety belt message).

A few commenters, including NAGHSR and some States, recommend that activities be conducted to improve the public's awareness of the benefits of not only safety belts and child restraints, but also air bags and other forms of automatic crash protection, and rear seat lap and shoulder harnesses. The Motor Vehicle Manufacturers Association (MVMA) states, "This will be especially important as 'air bag' systems, which require belt usage to be most effective, come into greater usage. Air bag systems are designed to supplement, not replace belts." The agencies encourage the development and implementation of activities which are designed to accomplish these goals.

The commenters suggest that 402 funds can play a key educational role to convey the idea that the use of motorcycle and bicycle helmets is an important form of occupant protection. With the inclusion of Motorcycle Safety in the list of priority program areas, motorcycle helmet use projects may be eligible for funding under expedited funding procedures for that program area. Bicycle helmet use projects may be considered for funding under the procedures for non-emphasis areas.

(2) Alcohol and Other Drug Countermeasures (formerly Alcohol Countermeasures)

Comments regarding this program area were received from States, NAGHSR, law enforcement and other State and local agencies, universities and colleges, organizations concerned specifically with alcohol countermeasures (such as Mothers Against Drunk Driving, or MADD, and the Distilled Spirits Council of the United States), organizations concerned with broader highway safety issues (including IACP, AAA, American Red Cross, American Insurance Association, NSC and HUFSA), and individuals.

None of the comments suggest deleting alcohol countermeasures from the list of National Priorities. In fact, one commenter remarks, "alcohol-impaired drivers are our greatest hazard on the public highway."

The agencies have determined that Alcohol Countermeasures continues to be an area of national concern, and that countermeasures exist in this area which have proven to be effective. Accordingly, the agencies will continue to include it in the list of National Priority program areas.

A number of commenters report great strides in reducing alcohol-involvement in fatal motor vehicle crashes, through passage of alcohol-related laws (such as administrative per se laws requiring automatic license suspension and illegal per se laws establishing BAC 0.10 as the legal level for alcohol intoxication) and successful enforcement and education efforts. However, despite these achievements, the respondents agree that alcohol-involvement in fatal motor vehicle crashes continues to be a significant national concern, constituting 52% of all fatal crashes in 1986. IACP states, "While vehicle crashes attributable to alcohol have fallen in recent years, we foresee no circumstances under which this will cease to be a problem on the highways of America. The positive momentum which the nation has experienced in the alcohol countermeasures area should continue into the next decade." Commenters also voice their concern that progress in this area seems to have leveled off.

Numerous countermeasures which have proved to be effective are noted in the comments. They include projects which focus on prevention (through alcohol information and education activities), enforcement (from identification and apprehension, to prosecution and adjudication of an offender), and rehabilitation and treatment. Specific examples which commenters believe to be particularly effective include alcohol countermeasure projects which have a community-based focus (such as Project Graduation, Techniques for Effective Alcohol Management (TEAM) and similar programs), use of sobriety checkpoints and standardized field sobriety testing (including Horizontal Gaze Nystagmus), selective DWI enforcement, formalized training for law enforcement officials, prosecutors and judges, and improvement of DWI offender tracking systems. The commenters recommend that, for the best results, alcohol countermeasures programs should involve a broad

spectrum of persons at the community level, including law enforcement officials, prosecutors and judges, health professionals (including EMS personnel), highway safety organizations (such as MADD and AAA) and other local community and business leaders.

The issue of the repeat drunk driving offender and the alcohol abuser is raised by a few commenters as a serious concern that deserves particular attention. Mr. Don Larson of Louisiana MADD, for example, expresses concern about this rapidly emerging problem. "Studies have proved that the first offenders are really not first offenders, and 70 to 80 percent of them are abusers and potential abusers." One commenter states that "DWI is without a doubt, the single greatest crisis intervention tool for alcohol and drug abusers" and goes on to say that the impacts of DWI efforts extend beyond traffic safety. Implementation of an alcohol countermeasure program in his community led to "an immediate reduction in crime, across the board * * * all violent crime statistics showed a downward trend." However, most believe the issue requires more attention. The agencies agree that the problem of repeat offenders and alcohol abusers is serious, and are working to develop countermeasures to combat this population. We encourage States and communities to seek innovative approaches to address this particular issue in their comprehensive alcohol countermeasures programs. Commenters also note and the agencies recognize the significant involvement of alcohol in pedestrian fatalities. We encourage States to include also in their comprehensive alcohol countermeasures programs, components addressing this problem.

In the NPRM, the agencies requested comments on whether the focus of the alcohol countermeasures program area should be changed in recognition of the growing interest in the problem of drugged driving. A significant number of respondents commented on this issue, all in favor of including drugs in the program area. The Los Angeles Police Department (LAPD) recommends inclusion of drugs due to "the fact that driving under the influence of drugs represents at least 10-15 percent of what we traditionally refer to as 'drunk driving'." The Division of Substance Abuse Services in New York estimates that "20-40 percent of traffic fatalities involve other drugs—usually in combination with alcohol."

Given these comments, the agencies find that drug use is perceived as an

important emerging highway safety problem. We also find that effective countermeasures have been developed to address this problem. For example, with NHTSA and State grant support, the LAPD has developed an effective method for identification of drivers impaired by alcohol and/or drugs. In cooperation with NHTSA, the IACP, and the other law enforcement agencies, LAPD intends to make these drug recognition techniques and procedures available to the nation's law enforcement community under strict standards and training criteria. Currently, the training is being conducted with State and local police at four pilot sites: Denver, CO; Nassau County, NY; Phoenix, AZ; and Virginia Beach, VA. We expect that this training will be expanded to additional sites during FY 1989. The agencies support this effort.

The commenters recommend different names for this expanded program area, including "Alcohol and Drug Countermeasures," "Alcohol and Other Drug Countermeasures," and "Impaired Driving," to name a few. In order to recognize that the use of alcohol is, and should be, treated in many respects like use of other drugs, and yet maintain the current emphasis in this program area on alcohol, which continues to be considered the most serious drug use problem in highway safety, the agencies have decided to rename this area "Alcohol and Other Drug Countermeasures."

(3) Police Traffic Services

All commenters addressing this program area, including States, NAGHSR, law enforcement associations (such as the IACP and the National Sheriffs' Association), other special interest groups and national organizations, law enforcement and other State and local agencies, and individuals, support its continuation as a priority program. We received no comments recommending that it be deleted as a National Priority.

The agencies find that Police Traffic Services (PTS) should continue to be included in the list of National Priority program areas. Our finding is based on a conclusion that PTS continues to be an area of national concern, perhaps even more so now than in 1982, and that countermeasures exist in this area which have proven to be effective.

To illustrate the need for PTS, commenters (including NAGHSR and several States and law enforcement officials) cite what they perceive to be an increasing disregard for traffic laws. The area most often mentioned in this regard is speed. Many commenters raise

this issue now that speed limits are being increased to 65 MPH on certain rural Interstate (and some other) highways. They believe these increases will result in more deaths and injuries from motor vehicle crashes. For example, the New York State Police asserts that, "there is a direct correlation between an increase in speed and an increase in the loss of lives." The commenters mention also the fact that traffic law violations continue to be the primary cause of motor vehicle crashes, and that additional demands on law enforcement agencies often prevent the States from dedicating sufficient manpower to traffic enforcement. The Montana Highway Patrol, for example, states that the 402 "program has allowed the Highway Patrol to increase enforcement efforts on Montana highways at a time when the demand for other law enforcement services has increased and agency manpower and resources have actually been reduced."

The respondents generally agree that countermeasures in this area have proved to be effective. Examples include Selective Traffic Enforcement Programs (STEP), which make it possible to dedicate additional enforcement efforts in areas with high crash rates or high incidents of traffic violations, and Operation CARE (Combined Accident Reduction Effort), which is designed to increase police presence and thereby reduce crashes during certain holiday periods when they are more likely to occur. These types of activities, it is suggested, especially when combined with public information efforts, effectively maintain a high level of visibility for the enforcement of traffic laws.

Even commenters addressing areas other than Police Traffic Services emphasize the importance of enforcement and education efforts in traffic safety. These efforts are cited as significant elements in the areas of alcohol countermeasures, occupant protection, motorcycle safety, pedestrian and bicycle safety as well as speed enforcement, truck safety and licensing. The agencies note that many enforcement agencies which responded indicate that they are developing comprehensive programs which combine a number of these areas in their PTS activities. The agencies heartily endorse this comprehensive approach. In addition, NAGHSR points out, PTS is especially important now, in light of "the remarkable proliferation of and progress in highway safety legislation in recent years."

We received one comment recommending that the scope of this

program be changed. The commenter suggests that direct funding of PTS be discontinued, and that our support should be limited to the development of new and innovative enforcement strategies for adoption by existing police agencies. The commenter asserts that direct support of PTS "will in the long term be counterproductive." (By direct funding, we understand the commenter to mean that the activity has been chosen by the State to receive Federal assistance. As stated previously, decisions regarding the projects to be supported with section 402 funds and the organizations to receive funding are all made by the States.) Although reductions in violations and crashes can be documented on single segments of roadway as a result of PTS projects, the commenter argues that PTS can not be supported as a solution to statewide problems.

The agencies strongly disagree with this assertion. It is our belief that 402 support of Police Traffic Services has been and will continue to be an essential part of the section 402 program and that it does have positive lasting effects. In 1985, the Insurance Institute for Highway Safety conducted a project in Elmira, NY, and in September 1987, the Highway Safety Research Center, University of North Carolina issued a study, each of which addressed the relationship between enforcement efforts and safety belt usage. According to their findings, enforcement efforts when combined with a public information and education campaign, can lead to significant increases in safety belt usage. We believe similar gains can be achieved using these techniques in other areas, such as speed enforcement. Programs which are chosen by States for funding, such as STEP and Operation CARE, have resulted in significant short term safety improvements, and we are unaware of evidence revealing that these short term improvements lead to adverse effects at a later date. In addition, these projects increase awareness at the local level of the importance of highway safety issues and have often led to local funding so the programs can continue over a longer period of time, extending their positive impact. For example, New York City used 402 funds to concentrate enforcement resources on a serious pedestrian problem in the city. The program produced very noticeable positive results and local funding continues for the program today. Further, some commenters cite important contributions, which are much more difficult to measure. According to the Colorado Department of Public

Safety, for example, the 402 program "has been very instrumental in raising the level of professionalism in traffic enforcement throughout the United States." Activities cited which contribute to professional growth or which institutionalize improvements in enforcement techniques and strategies, include: Training in areas such as traffic safety management, traffic investigation, and speed enforcement; instructor training in DWI detection; crash reconstruction programs; evaluations of current enforcement activities; and the development of system improvements. The agencies will therefore not limit the scope of PTS as suggested.

The Governor's Representative for Maryland recommends that the Police Traffic Services area be redesignated "Traffic Law Enforcement and Reporting" to "more clearly identify the true scope" of this program. The agencies believe the program area is broader than Maryland's proposal would suggest. Police Traffic Services does involve law enforcement and reporting, but it also includes vehicle crash investigation, problem identification and education components, to name a few. Accordingly, we will retain the current name for this area.

(4) Emergency Medical Services

With only one exception, all commenters addressing this issue, support continuation of Emergency Medical Services (EMS) as a National Priority area. Commenters include States, NAGHSR, national organizations, State agencies and local groups representing EMS interests (such as the American Trauma Society, Mid-Atlantic EMS Council, National Association of State Emergency Medical Services Directors, National Association of Emergency Medical Technicians, Emergency Medical Services Division of the Colorado and Texas Departments of Health, National Council of State EMS Coordinators, and Critical Illness Trauma Foundation of Boulder, MT) and organizations and agencies with broader highway safety interests.

The one exception was Mr. Joseph E. Meyerring, a Traffic Safety Education Specialist with the Minnesota Department of Education, who recommends discontinuation of the program, asserting "states should be required to submit plans to bring [EMS] systems up to a set of standards. * * * Upon completion of the plan the state would no longer receive funds." The thrust of Mr. Meyerring's comment is already addressed through the agencies' administration of the 402 program under the seed money concept. Under this

concept, section 402 funds are awarded to accomplish tasks in accordance with highway safety goals. They do not pay for ongoing operating expenses for highway safety programs once these tasks are completed. However, to the extent that Mr. Meyerring meant literally that no EMS activities Statewide should be eligible for 402 funding once certain standards are attained, the agencies disagree with his recommendation. It runs contrary to the requirement imposed by Congress that the standards be changed to guidelines, and will therefore not be adopted. In addition, we find that such an approach would stifle the development of new technologies in the EMS area.

The agencies have determined that Emergency Medical Service (EMS) continues to be an area of national concern, and that countermeasures exist in this area which have proven to be effective. Accordingly, the agencies will continue to include it in the list of National Priority program areas.

The national concern which EMS addresses is summarized in testimony of Mr. William Metcalf, Director of Emergency Medical Services, Colorado Department of Health. He states, "Unfortunately, it's doubtful that we'll ever prevent all highway accidents from occurring and, thus, we must be prepared to manage those people who are injured as a result of highway accidents. If we accept the fact that we'll never successfully eliminate all highway accidents, then we must turn our attention to Emergency Medical Services as a method for reducing highway injuries and fatalities after the crashes have occurred. This is particularly true if we keep in mind the statistics reported by the American Trauma Society, which state that one out of every five fatalities due to injury, . . . is the result of a survivable injury, if that person had received the appropriate treatment."

In the NPRM, the agencies state their belief that comprehensive systems of trauma care and improved prehospital services are effective in reducing injuries and fatalities. The comments support this statement, and identify the elements that are necessary to optimize the outcome of highway and traffic related injuries, including the single number public access, coordinated dispatch, ambulance to hospital communications, trained first responders and prehospital personnel, adequate ground and appropriate air transportation, highly trained in-hospital personnel at specialized trauma care centers, prehospital and hospital

coordination, and injury or trauma registries.

The commenters also emphasize the effectiveness of this program area in fostering integrated programs at the local level. EMS personnel they indicate, have become increasingly involved in occupant protection, alcohol prevention, public education and traffic records programs in recent years. As already stated, the agencies believe that integrated and comprehensive activities such as these should be encouraged.

The particular countermeasures which are addressed in each comment depend largely on the sophistication of the EMS system which is available to the respondent. Commenters from States still needing basic prehospital services, for example, highlight the success of pilot projects or the needs in prehospital services; those from rural areas focus on the difficulties which are unique to these communities; and States and communities having the essential prehospital components emphasize the importance of trauma system development, trauma registries, and programming to refine the delivery of care to highway injured patients.

The IACP points out, "Statistics show that the difference between life and death in motor vehicle accidents is directly related to the sophistication of the available emergency services." The agencies therefore wish to provide sufficient flexibility in the EMS program area, to enable States at all levels of sophistication to improve their systems of trauma care.

The Governor's Representative for the State of Maryland recommends changing the name of Emergency Medical Services to "Pre-Hospital Emergency Medical Services" to "more clearly identify the true scope" of the program area. The agencies believe this would unnecessarily limit the focus of the program. At the other end of the spectrum, the National Association of State Emergency Medical Services Directors recommends that we recognize that "EMS represents a sophisticated system of care that begins even before a motor vehicle accident occurs and extends through rehabilitation, far beyond the emergency room doors." The agencies believe EMS should continue to emphasize the area of acute care, which covers pre-hospital and the initial stages of hospital care for highway-injured patients, as well as prevention and intervention activities.

(5) Traffic Records

Comments were received recommending continuation of Traffic Records as a priority program from a number of respondents, including States,

NAGHSR, law enforcement and other State and local agencies, universities and colleges, and national organizations (including AAA, HUFSA, ITE, and NSC).

As he did with regard to EMS, Mr. Meyerring of the Minnesota Department of Education recommends discontinuation of this program, asserting "states should be required to submit plans to bring [Traffic Records] systems up to a set of standards. * * * Upon completion of the plan the state would no longer receive funds." As stated previously, the thrust of Mr. Meyerring's comment is already addressed through the agencies' administration of the 402 program under the seed money concept. To the extent that Mr. Meyerring meant literally that no Traffic Records activities Statewide should be eligible for 402 funding once certain standards are attained, the agencies disagree with his recommendation. It runs contrary to the requirement imposed by Congress that the standards be changed to guidelines, and will therefore not be adopted. In addition, we find that such an approach would stifle the implementation of new technologies in the Traffic Records area.

In addition, two States recommend that the area be deleted. However, in making these recommendations, both seem to assume that the traffic records functions would be integrated into other program areas. Neither suggests discontinuing funding for the types of activities which have been supported under the Traffic Records program.

The Maryland Governor's Representative states, "the Traffic Records program area as such can be eliminated without any adverse effect on federally funded state traffic records improvements." However, he also asserts, "any amendments to the program areas [should] be of a broadening nature, and not more restrictive * * * [since] states must have maximum flexibility." Most of the comments suggest, and the agencies believe, that since this program area is of such importance, and since it involves unique and specialized countermeasures, it requires separate designation as a National Priority program.

The Montana Governor's Representative, at the Lakewood, Colorado hearing, proposed deletion of the Traffic Records program and, in its place, a new priority area called "Program Administration and Management." He recognizes that "[the area of traffic records] probably is the real foundation of the whole program," but he asserts that these functions "can be provided by a good sound staff in

administering a program." Montana also recommends that the agencies remove the 10 percent cap for planning and administration costs, which was established in the 1982 final rule. Since these issues were not raised in the NPRM, the agencies did not receive many comments addressing them. Two States present at the Colorado hearing commented on Montana's recommendation to establish Program Administration and Management as a new priority area, and both indicated that they do not believe this is necessary. The Governor's Representative from Oregon agreed with Montana that the 10 percent cap on planning and administrative costs should be removed.

The agencies have decided not to add Program Administration and Management to the list of priority programs, nor to remove the 10 percent cap for these costs. Our decision is based on the same concerns we cited in our 1982 joint final rule. We want to ensure that sufficient funds are put into safety programs rather than be absorbed by administrative overhead.

In addition, we find that Traffic Records should continue to be included on the list of National Priority program areas. Our finding is based on a conclusion that Traffic Records continues to be an area of national concern, and that measures exist in this area which have proven to be effective in addressing highway safety problems.

It is clear from the comments that this program area is considered to be of national concern. Arkansas' submission is representative. It states, "the Traffic Records area is the lynch pin of the national highway safety program * * * [and] should remain an emphasis area." Many comments emphasize the fact that traffic records are essential for the States to perform meaningful problem identification, evaluation, countermeasure development, planning and program management, and to make informed decisions. The Louisiana Governor's Representative states, "I think it's the basis of most of everything that we do." In addition, the commenters indicate that all other priority program areas depend on traffic records for support. As stated by NSC, "Traffic records is the unseen partner * * * to the other priority areas. Whether it is to track problem drivers, identify portions of roadways where crash frequency is high or to type-cast pedestrian incidents, Traffic Records provide essential data.

The commenters are in agreement that measures have proved to be effective in this area. Texas, for example, indicates,

"Advances in computer technology and systems design have significantly enhanced the State's ability to access and analyze" data. Some States refer to their success with Comprehensive Computerized Safety Recordkeeping Systems, which is designed to link together State data components and integrate subfiles. However, as technology improves and traffic safety issues change (thereby requiring that new data elements be added to State data bases) the commenters stress the continuing need for support in this area. For example, there appears to be a need to improve traffic record systems (perhaps by adding new data elements) to help identify the particular causes of pedestrian fatalities. The agencies encourage the use of funds in this area to make these improvements, because we believe they will provide great assistance in the development of appropriate local countermeasures which are effective in addressing this problem. The commenters also list other areas which continue to require attention in the area of Traffic Records, including the need to: Link computer systems and integrate data elements; establish uniform data elements; implement innovative driver licensing techniques to identify problem drivers and to ensure that sanctioned drivers do not receive licenses; and increase participation in rapid interstate information exchange systems (such as the National Driver Register) and compacts to assure proper licensing (such as the Driver License Compact).

In the NPRM, the agencies tentatively determined that section 402 funds apportioned to the States should not be used to fund classified truck and bus driver licensing activities conducted pursuant to the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), which are covered by a separate FHWA grant program under that Act. Interested parties were asked, if they disagree with the agencies' initial determination, to indicate why section 402 funds are necessary to support actions taken under the CMVSA, and to identify specific actions that would be appropriate for funding under section 402.

Prior to the 402 hearings, the agencies received a number of requests for clarification with regard to this tentative determination. Therefore, at each of the hearings, a statement was made in our opening remarks to clarify what the agencies were seeking in the comments regarding the issue. We stated, "The agencies' tentative determination is based on our desire to see Section 402

funds used as seed money for programs which are most effective and which do not duplicate activities for which funding is otherwise available." We encouraged witnesses to provide specific examples of projects that would fit under either section 402 or CMVSA.

This issue is addressed by several commenters, almost all of which are national organizations (including the American Insurance Association, HUFSA and NAGHSR) or States. The comments varied widely. A few States agree with the agencies' tentative determination, and testified that CMVSA activities should receive no section 402 funds beyond what has already been set aside out of section 402 monies. Others disagree with the initial determination, and cite examples of activities that section 402 should support. A few commenters go further, and recommend Truck Safety as a new priority area. Finally, NAGHSR and the State of Hawaii recommend that items which are covered by the FHWA grant program should be eligible for funding in the same way activities in non-emphasis areas are eligible.

The agencies have decided to adopt a combination of these recommendations. We recognize that there are certain activities which have traditionally been eligible for funding under the priority program areas, and also benefit commercial motor vehicle safety. These activities should continue to be eligible for funding. For example, selective enforcement programs that address commercial motor vehicle safety problems such as speeding, alcohol and drug impaired driving, safety inspections, and the enforcement of licensing and registration laws could be covered under Police Traffic Services. Improvements in a State's licensing, registration and records systems, that may include commercial motor vehicle actions, could fall under the Traffic Records priority program.

Truck safety activities that are outside the designated priority areas should not automatically be eligible for funding. The agencies have decided that these activities should be treated as non-emphasis areas, and approved for 402 funding only upon the submission of sufficient justification to the agencies' regional offices, in accordance with the existing funding procedures for non-emphasis programs. By adopting this decision, the agencies seek to avoid duplication and to ensure that the section 402 program does not become an alternative funding mechanism for implementing projects for which CMVSA grant funds are available. The

agencies also believe that the highway safety expertise in each State is an important resource in carrying out the purpose of the CMVSA and we, therefore, actively encourage close coordination between Governor's Representatives for Highway Safety and others in the States who are involved in truck safety.

(6) Motorcycle Safety

The agencies received a substantial number of comments regarding Motorcycle Safety. Comments in support of adding Motorcycle Safety as a National Priority program area included submissions by Senator John C. Danforth, 17 States, NAGHSR, State and local law enforcement and other agencies, groups representing motorcycle interests (such as the Motorcycle Safety Foundation, the Motorcycle Rights Funds, the American Motorcycle Association, the Colorado Motorcycle Dealers Association and American Bikers Against Totalitarian Enactments, or ABATE), and national organizations representing broader highway safety interests (including AAA, the National Sheriffs' Association, IIHS and the American Insurance Association). One commenter states, "Having lain fallow for many years, motorcycle safety is certainly a fertile field for innovation. * * * we can scarcely expect [the States] to give high priority to a problem that is not considered a priority by the Federal Government."

The agencies have decided that Motorcycle Safety should be added to the list of National Priority program areas. Our decision is based on a finding that Motorcycle Safety is an area of national concern, and that countermeasures exist in this area which have proven to be effective.

The commenters agree that motorcycle crashes are a national problem, accounting for 4,500 deaths and 164,000 injuries each year. It is noted in the comments that motorcycles represent only about 3-4% of vehicle registrations, but 11% of all motor vehicle crash fatalities; that the death rate per vehicle mile travelled is 20 times, and the severe injury rate is 3 times, that for automobiles; that death or injury occurs in 8 of 10 motorcycle crashes compared to 2 in 10 automobile crashes; that 40-50% of motorcycle crashes involve alcohol use; and 40-50% of fatally involved motorcycle operators are unlicensed or improperly licensed. None of the respondents asserts that motorcycle safety is not a national problem.

Numerous countermeasures are cited by the commenters as having been proved to be effective, most notably safety helmet use, conspicuity enhancement, enforcement of operator licensing standards, rider education, motorist awareness programs, and programs for the responsible use of alcohol and other drugs. Several commenters voice concern, however, about single issue solutions to the motorcycle safety problem, specifically that some States seem to believe that if a helmet law is enacted no other motorcycle safety program is needed. These respondents stress the importance of integrated, comprehensive programming in motorcycle safety and in other traffic safety program areas, and the agencies fully agree with this comprehensive approach.

A NHTSA funded study in California conducted in the early 1980's found that there were 15-21% fewer motorcycle crashes when riders passed a rigorous licensing procedure. (Current data suggest that approximately 40% of riders involved in crashes do not have valid motorcycle operator licenses.) In the area of helmet use, effectiveness data consistently show that unhelmeted riders are three times as likely to sustain fatal head injuries as helmeted riders. Section 402 funded comprehensive motorcycle safety programs show a significant decrease in motorcycle crashes. For example, a York County, PA project showed an 85% reduction in motorcycle fatalities.

The Governor's Representatives for Hawaii and New Mexico state that, in their opinion, Motorcycle Safety should not be added as a priority program since their motorcycle education programs are self-funded. The agencies believe this issue is an important one, and have taken it into consideration. We agree with these States that, unlike other program areas, revenues can be and have been raised for motorcycle safety programs through registration, licensing, insurance or other fees relating to motorcycles. The commenters note that 29 States have passed legislation implementing State funded motorcycle safety programs, the majority of which are for rider education. The agencies strongly believe that additional States are capable of funding these programs themselves. We strongly encourage them to do so, and to determine the effectiveness of these programs. The Florida Bureau of Public Safety Management indicates in its comments that 402 funds have been "effective in focusing attention to the seriousness of the [motorcycle safety] problem in

Florida," which has led to adoption of legislation dedicating funds to rider education. It is the agencies' strong desire that identifying motorcycle safety as a National Priority program area will provide the added momentum needed for many more States to obtain dedicated funds for not only rider education, but also for comprehensive motorcycle safety programs.

The agencies believe 402 funding can also benefit the States which already have dedicated motorcycle funds. Only a few States are generating enough funds to support comprehensive motorcycle safety programs, and small States with few motorcycle registrations are not generating enough funds to fully support even a rider education program. It is our belief that States currently funding rider education may be able to expand into more comprehensive programs. The agencies intend to track the States' progress in establishing self-sufficient motorcycle safety programs, and to evaluate the comprehensiveness and effectiveness of these programs.

It was suggested by several commenters at hearings that section 402 funds should be used to subsidize the cost of rider education programs. Since the purpose of the section 402 program is to provide seed money, rather than to pay ongoing operating expenses for highway safety programs, this generally would be an inappropriate use of these funds. An example of an activity in the rider education area that would be appropriate for section 402 funding might be a pilot program that introduces rider education and helps it to become self-sufficient. The States should not limit their activities, however, to rider education. Section 402 funds may be used, for example, for activities that would lead to substantial increases in helmet use, programs to improve motorcycle conspicuity and motorist awareness of motorcycles, countermeasures against alcohol and drug involvement in motorcycle crashes, and programs to develop and enforce operator licensing standards and testing.

Illinois suggests and the agencies agree that this area should cover not only motorcycles, but also motor scooters, motor bikes and other similar types of vehicles. The problems associated with these vehicles, and the countermeasures which would address these problems, are similar to those for motorcycles. Accordingly, we encourage States to include motor scooters, motor bikes and other similar types of vehicles in their comprehensive motorcycle safety programs.

FHWA-Administered Program Area *Roadway Safety (formerly Safety Construction and Operational Improvements)*

Comments were received from States, NAGHSR, national organizations (such as HUFSA, ITE, and AAA), State and local highway agencies and representatives from the private sector, recommending the continuation of the FHWA program area on the list of National Priority programs. No comments were received suggesting the area's exclusion from the list.

The Governor's Representative and the engineering program manager from the State of Louisiana recommend that the title of the FHWA Priority program area be changed from "Safety Construction and Operational Improvements" to "Roadway Safety." The words "construction" and "improvements," they assert, are confusing and misleading to many since the 402 program's authorizing law prohibits use of section 402 funds for the design, construction or maintenance of highway projects. The agencies have decided to rename the FHWA program area, "Roadway Safety." We believe this new title better reflects the scope of the program.

The agencies will include Roadway Safety on the list of National Priority program areas. This decision is based on our finding that Roadway Safety is an area of national concern, and that countermeasures exist in this area which have proven to be effective.

The commenters addressing this program area agree that it is of national importance. ITE's comments summarize some of the respondent's concerns:

* * * with traffic volumes expected to increase by 45 percent by the year 2005, higher vehicle ownership, and travel speeds projected to increase significantly in the coming years, fatalities and injuries sustained in motor vehicle accidents will continue to constitute a major health problem in the United States. * * * These trends are taking place at the same time the nation is facing a shortage of well trained traffic operations and safety personnel needed to effectively carry out the highway safety improvement programs. * * * As a result, education and training programs made possible through the section 402 program will become even more imperative in the coming years.

Other factors cited by the commenters as being of continuing concern include: Increased resurfacing and reconstruction activities on aging highways where workers and traffic must coexist; a greater number of older drivers and pedestrians; and a more diverse mix of small cars and large trucks on existing roadways.

ITE points out that it is difficult to measure the effectiveness of activities under this program area, since they serve "as the building blocks" which enable "State and local agencies to implement the direct impact projects and programs—such as the highway safety construction programs [which can not be funded under the 402 program]." Section 402 funds can be used to identify a problem, select a countermeasure and evaluate the results of an improvement. However, any construction improvements made must be financed with other funds. In addition, several commenters assert that increased funds are needed to maintain a safe roadway environment. As is discussed below under the heading Amendments That Would Require Congressional Action, they suggest that additional resources be made available to the States under the FHWA portion of section 402.

However, the respondents identify a number of countermeasures which, they find, have proved to be effective, and have provided high payoffs with the funds available. Commenters representing State and local jurisdictions, in particular, emphasize the benefits derived through training, safety engineering and traffic operational assistance provided to local jurisdictions, which have no in-house traffic engineering expertise. The agencies have found, and commenters agree, that these activities have helped to spur technological advances, information sharing, and increased support for safety and operational improvements. As noted by NAGHSR and other respondents, these activities also often trigger community-wide traffic engineering efforts and interdisciplinary cooperation in and between jurisdictions combining engineering, enforcement and education at the local level. Other countermeasures reported by the commenters to be effective, and to provide a high payoff include safety studies, record systems improvements, and activities leading to low cost traffic engineering safety improvements, such as improved signing, markings and delineations, and lighting and intersection improvements.

The Governor's Representative for Oregon suggests that certain traffic records projects should be fundable with FHWA 402 monies. The agencies agree that certain traffic records activities relating specifically to the identification of roadway safety, operations and hazard problems may be appropriate for funding under Roadway Safety.

Non-Emphasis Areas

The agencies received comments recommending that additional program areas be added to our National Priority List. As will be explained in detail below, we have decided not to include these areas. Projects in these areas may of course be funded under either or both of the funding procedures that were established in the agencies' 1982 final rule (47 FR 15116), and codified in 23 CFR 1205.5. These procedures were explained in the preamble to that final rule.

The Formal Decisionmaking Approach * * * is a method by which States could implement a formal decisionmaking process for highway safety plan development. The result of this decisionmaking process would be the identification by the State of those program areas that represent priorities within the State. * * * Once a State implements an approved process, the State would thereafter be able merely to list and describe in its Highway Safety Plan those projects identified through an exercise of such an approved process as the most effective in reducing accidents, injuries and fatalities in that State, certify that those projects were identified in accordance with that process, and supply the final decisionmaking results. (47 FR at 15118)

The Problem Identification Approach * * * consists of using the existing procedures for problem identification and countermeasure development, including guidelines. [However.] * * * a greater degree of substantive review of proposed projects outside of [the National Priority program] areas is clearly necessary and appropriate. The advantage of this approach is that all of the States currently utilize this procedure and are familiar with the review process. (47 FR at 15119)

These funding mechanisms permit States to support, under section 402, new and innovative programs in any highway safety area and to address problems which are unique to a particular State, provided sufficient justification has been submitted. Since 1982, over \$9 million in 402 funds have been obligated for projects under these mechanisms. States which identify significant problems outside the priority areas, for which there are effective countermeasures available, are encouraged to continue to use these procedures in order to address their unique regional problems. We note that at least one commenter views the process for funding non-emphasis areas as a difficult hurdle to surmount. It is not the agencies' intention to create an unnecessary or difficult barrier for the States to overcome. This process was created merely to provide an orderly method for assuring that major highway safety problems at the State and local level are being addressed with effective countermeasures. Any State that has

difficulty in following the non-emphasis funding procedures should contact the agencies' regional and field staff, who stand ready to actively provide assistance.

In the NPRM, we stated that we were not proposing any changes to these funding procedures. A number of respondents commented on the need for flexibility in the 402 program, and some recommended increasing the program's flexibility by adding to the list of priority programs. The State of Alaska, due to the limited size of its highway safety staff, went so far as to suggest inclusion of program areas that are not presently a concern in the State. The Governor's Representative explained, if these areas were ever to become a problem, he did not believe he could afford to spend the time necessary to develop justification under the funding procedures. For this reason, he states, program areas simply are not funded in Alaska, unless they have been designated as National Priority programs. However, he did not suggest any amendments to the procedures. The vast majority of those addressing this issue consider the procedures established in 1982 to provide sufficient flexibility to address identified highway safety problem areas. Maryland comments that "this has sometimes required a rather liberal interpretation of the types of measures covered by particular priority areas." As stated by New Mexico, "There can be little doubt that the perceived needs and problem areas will differ from state to state as well as in different communities within a state." The State continues, " * * * flexibility exists in the existing program for this state to address its primary problem areas and to develop and obtain approval of projects in other areas of highway and traffic safety as the need arises." Accordingly, these procedures will remain unchanged.

(1) Pedestrian and Bicycle Safety

Commenters in support of adding pedestrian or bicycle safety or both to the list of National Priority program areas included Congressman Vic Fazio from the State of California, 16 States, NAGHSR, groups representing bicycle interests (most notably, the League of American Wheelmen [LAW]), national organizations representing broader highway safety interests (including the National Sheriff's Association, ITE, AAA, American Insurance Association, and the NSC), universities, health and injury centers, and individuals (who are either active bicycle riders or instructors certified by LAW). Others were opposed to its inclusion. Eighteen States, for example, recommended either that the

area of pedestrian and bicycle safety, in particular, should not be included as a priority program, or that the list of priority programs should not be expanded at all.

The agencies recognize that this program, particularly with regard to pedestrians, is an area of national concern. As we stated in the NPRM, nearly 8000 non-occupants (6771 pedestrians and 941 bicyclists) were killed in motor vehicle crashes in 1986, which represents 20% of all motor vehicle fatalities. In some urban areas, non-occupant fatalities represent 50% or more of all motor vehicle deaths. The commenters note the high numbers of injuries with regard to bicycles (bicycle crashes result in 1.5 million injuries each year, 500,000 of which require emergency room treatment), although the fatality rate is not nearly as high as for pedestrians. While this area is considered to be, to a large extent, an urban problem, we received data from commenters showing that, at least in some States, fatality rates for bicycles and pedestrians in rural regions equal or exceed these rates in urban areas. In Montana, for example, 95% of bicycle crashes occur in urban areas, but 50% of the fatalities occur in the rural regions. In Wisconsin, 85% of bicycle and 80% of pedestrian incidents occur in urban areas, but 60% and 50% respectively of these fatalities occur in rural regions.

The agencies have decided, however, not to include pedestrian and bicycle safety in our list of National Priority program areas at this time. Our decision is based on a finding that many of those countermeasures funded under the existing priority programs have been proven to be effective in reducing pedestrian and bicycle safety problems. (Examples of these countermeasures are discussed above under the headings, Alcohol and Other Drugs Countermeasures, Police Traffic Services and Traffic Records.) It is based also on a determination that currently, sufficient other proven countermeasures outside the priority programs named above, have not been demonstrated to exist in this area. The agencies are not at liberty to determine that the pedestrian and bicycle area should be added to the list of National Priority programs simply on the basis that the area involves a serious problem. The Federal statute directs the agencies to determine under section 402 which programs are "most effective in reducing accidents, injuries and deaths [emphasis added]." The agencies can and, in fact, plan to support efforts to address pedestrian and bicycle safety problems through other means (such as

through funding under other 402 priority categories, by means of the non-priority 402 funding process, and under the section 403 program which, unlike 402, is designed to conduct highway safety research and development). However, the agencies do not believe that pedestrian and bicycle safety can be properly included on the list of National Priorities until the countermeasures in these areas have been demonstrated to be effective.

In the area of pedestrian safety, NHTSA studies in the 1970's showed that some programs could achieve measurable decreases in one category of incidents (so-called dart-out accidents involving children). However, other countermeasures that would constitute a comprehensive program have either not been rigorously tested or shown no reductions in incidents.

The agencies note that alcohol-related crashes (including events where the driver, pedestrian or both had consumed alcohol) constitute the largest single type of pedestrian safety problem. As to alcohol impairment of drivers, the agencies note there are many effective countermeasures, and that program area has been retained on the priority list (see previous discussion); those programs serve to promote safety for pedestrians as well as vehicle occupants. However, as to alcohol impairment of pedestrians, NHTSA is not aware (through its own work or other sources) of countermeasures that have been either developed or tested.

Accordingly, the agencies have decided not to add pedestrian safety at this time as a separate category on the National Priority program list. However, if a State has a pedestrian safety program which it believes will be effective in reducing crashes and injuries, the State can still make use of Section 402 funding, under one of the other priority categories (e.g., "dart-out" programs funded under police traffic services), or under the non-priority funding process to address special local needs.

A number of commenters suggest that, due to a lack of funds and emphasis, activities in this area have been suspended in many States and countermeasures now need to be developed. There are few if any materials, for example, which address the problems of alcohol involvement in pedestrian and bicycle fatalities or which target the elderly population, which is over-represented in pedestrian death rates. The agencies are aware of a number of local projects which appear to be effective in addressing the safety of young pedestrians. However, this

population represents only about 10% of the overall number of pedestrian fatalities. Approximately 45 percent of pedestrian fatalities for age 15 and older involve alcohol, and a considerable number involve the elderly. Countermeasures addressing these problems need to be developed and tested before this area can be considered to be among the "most effective" programs. We strongly encourage the States to use the funding processes for non-emphasis areas to obtain approval for using 402 monies to introduce effective, innovative pedestrian safety countermeasures.

We note that some commenters cite countermeasures which they believe have been demonstrated to be effective in addressing bicycle safety. Although we do not believe the bicycle safety component of the program alone represents a problem which is national in scope, we strongly encourage States and communities with specific bicycle safety problems and effective countermeasures to address these problems, to use the current non-emphasis funding process to finance bicycle safety projects.

We note also that some proven roadway countermeasures exist which have been identified by FHWA. Pedestrian and bicycle problems, for which roadway countermeasures have been identified, may be covered under the FHWA National Priority program area, entitled Roadway Safety. Since it is mentioned in some comments, we wish to make sure the public is aware that 402 funds may not be used for design and construction purposes. Roadway construction countermeasures such as fixed illumination, urban intersection improvements and barriers, for example, can not be financed with section 402 funds. What may be financed with 402 funds under Roadway Safety, are projects to identify areawide pedestrian and bicycle-related problems and to select specific countermeasures to reduce these accidents. The actual design and construction of the countermeasures which are selected under 402 could then be funded using other Federal-aid, State or local assistance.

Texas suggests, "Before committing significant amounts of federal funds to pedestrian and bicycle safety, it is recommended that an in-depth analysis of the history of such programs be made to determine a limited sample of successful or potentially successful projects." The agencies agree that, at this time, new and innovative countermeasures need to be developed and proven to be effective. To assist in

the research and development of effective countermeasures, we will compile and distribute a compendium of projects that appear to be effective in addressing pedestrian and bicycle safety problems. NHTSA intends also to devote Highway Safety Research and Development funds, under section 403 of the Highway Safety Act of 1966, to identify effective countermeasures in the area of pedestrian safety. In addition, if a State is interested in conducting a demonstration project to determine the effectiveness of a particular countermeasure, NHTSA would consider providing section 403 funds for evaluation purposes. Further, the agencies strongly encourage the States to use the non-emphasis area funding mechanisms described above, to initiate and test pedestrian and bicycle safety projects, and to report their methodology and results to us. Our regional and field staff will be available to provide States with assistance.

(2) Driver Education

The inclusion of Driver Education as a priority program was recommended by two States, AAA, the American Association of Retired Persons, groups representing driver education interests (such as the American Driver and Traffic Safety Education Association and the Driver and Safety Educators' Association of New York State), educators, and individuals.

The agencies are not persuaded that driver education should be added to the list of National Priority program areas.

The commenters generally cite the number of accidents, injuries and fatalities nationally to establish that driver education addresses a national problem. One commenter mentions that the driver causes between 87 and 93 percent of all crashes. However, this figure includes causes such as alcohol and drug use, and traffic law violations which are addressed through the existing emphasis areas. More importantly, driver education has not been demonstrated to be a most effective countermeasure for addressing these problems. Many programs and countermeasures might have some impact on reducing accident, injury and fatality rates. However, the agencies are required by Congress in this rulemaking to emphasize as National Priority program areas only the most effective programs.

The data most often cited in support of the effectiveness of driver education, are the results of a study conducted in DeKalb County, GA. The primary objective of the DeKalb project was to determine the crash reduction potential of competency-based driver education

training as compared to no formal training. To accomplish this, researchers evaluated the driving records of student volunteers who completed either the Pre-Driver License (PDL) curriculum (a 30 hour course) or the Safe Performance Curriculum (SPC) (an 80 hour course), or who were in the control group. Based on a follow-up evaluation, which was presented to the Research Division of the American Driver & Traffic Safety Education Association at its Annual Conference in August 1987 by a NHTSA Research Psychologist, commenters note that driver education students were involved in 6% fewer crashes and committed 10% fewer violations than untrained students. The agencies believe, however, that the results of the DeKalb study are mixed. Although it is true that students who completed the PDL curriculum were involved in 6% fewer crashes, only male PDL graduates committed fewer traffic violations. In addition, the study found that the SPC was effective in reducing convictions but not crashes for males, and neither crashes nor convictions for females.

While we are not persuaded to add Driver Education to the list of National Priority programs, we want to point out that States may apply for section 402 funding under the 1982 funding mechanisms for new and innovative projects relating to driver education. However, we would like to emphasize that the purpose underlying the 402 program is to provide seed money for new and innovative ideas, not to provide the operating expenses for ongoing programs.

(3) Elderly and Youth Programs

A number of commenters, including 10 States, raise concerns regarding the need to develop programs designed to educate young and elderly drivers. The University of North Carolina, Highway Safety Research Center, for example, suggests that young drivers be introduced into the driving population gradually, and that older drivers gradually exit therefrom. The commenters note, in particular, the overrepresentation of youth in fatalities and the trend toward a greater proportion of older drivers in our population. Louisiana estimates that by the year 2020, one fifth of our population will be 65 or older. However, only a few of the respondents suggest adding a new emphasis area to address these concerns. Most of the commenters seem to be satisfied that these issues can be addressed through the emphasis areas currently in place, and the 1982 funding procedures. While the agencies recognize that youth are overrepresented in fatalities and

consider this issue to be of importance, we believe that programs which have been proven to be effective focus not only on the age of this population, but rather on the particular cause of the fatalities. For this reason, we believe that problems affecting the young can and, in fact, should be funded under the existing priority programs discussed elsewhere in this final rule.

In addition, the agencies did not receive in the comments, nor do we have at this time, sufficient evidence to indicate that the particular highway safety problems affecting elderly and young drivers are sufficiently unique that they stand alone as separate national concerns, or that there are countermeasures outside the existing priority emphasis areas which have been proved to be most effective in these areas in reducing accidents, injuries and fatalities.

We note that, with regard to elderly drivers, section 208 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, requires the Secretary to "undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of (1) problems which may inhibit the safety and mobility of older drivers using the Nation's roads, and (2) means of addressing these problems," and to develop a pilot program of highway safety improvements in conjunction with the study. In accordance with the requirements of the Act, results of this study and an evaluation of the pilot program, shall be reported to Congress. The results of these analyses, due in April 1989 and April 1990 respectively, should provide valuable additional information on the significance of the problem and appropriate countermeasures.

(4) Innovative Programs

The State of North Dakota suggests reserving a portion of 402 funds, such as 10%, for innovative projects. In testimony, Mr. Joe Carlson, for the State, recommends establishing a separate category for innovative activities, which would allow the State "to try some things that may not have been tried or that may be unique to our own situation." The agencies believe, and most of the comments indicate, that the procedures put in place in 1982 provide sufficient flexibility for States to try new things. We note that many of the States, including North Dakota, have conducted some very innovative activities, both within and outside the priority programs. Accordingly, we will not add

this to the list of National Priority program areas.

(5) Periodic Motor Vehicle Inspections

One commenter suggests adding periodic motor vehicle inspections to the list of National Priority program areas. The conference report on the continuing resolution for fiscal year 1988 (Pub. L. 100-202) directed that "NHTSA conduct a comprehensive evaluation of the effectiveness of state motor vehicle safety inspection programs * * *." In accordance with the conferees' instructions, NHTSA has submitted to the House and Senate Appropriations Committees and to appropriate authorizing committees, a study plan describing study methodology and specifying a detailed study timetable. The agencies believe it would be premature to include periodic motor vehicle inspections as a priority area in light of this pending evaluation of this area's effectiveness. States with particular problems in this area, for which proven effective countermeasures are available, are encouraged to use the non-emphasis funding processes to obtain approval for local funding.

(6) Others

We also received suggestions that the following additional program areas either be added to the list of priorities or at least should receive some national attention: School bus safety, Operation Lifesaver (a program which addresses highway-railroad grade crossing safety), winter driving and regional vehicles (such as snowmobiles, dune buggies and mud buggies). The agencies did not receive in the comments, nor do we have at this time, sufficient evidence to indicate that these particular problems require designation as separate 402 National Priority areas. This does not preclude, however, the funding of particular projects which use proven effective countermeasures to address problems identified in the States, through the non-emphasis area funding mechanisms. In addition, there may be funding sources outside of the section 402 program that can address some of these programs and activities.

Additional Issues Raised in Comments

(1) Change Standards to Guidelines

Section 206(a) of the Act amends section 4C2 by replacing the terms "standard" and "standards" wherever they appear with the words "guideline" and "guidelines." To implement this change, the agencies proposed, in the NPRM, to amend the body of 23 CFR

Part 1204. We proposed to replace the terms "standard" and "standards" with the words "guideline" and "guidelines," and to replace the term "shall" with the word "should." We received no comments objecting to these proposed regulatory changes.

As stated in the NPRM, the agencies intend to review all the regulations that implement section 402, including Part 1204, and the supplemental materials that follow, to determine whether additional revisions need to be made. See, 23 CFR Chapter II. Any additional revisions will be accomplished in a separate rulemaking action.

(2) Periodic Update of the Guidelines

The Governor's Representative for New Jersey recommends that the agencies "update the guidelines periodically and make them available to the states as models and references which can be used in developing programs." Several other commenters echo this sentiment. The agencies believe they have an important role in technology transfer in all areas of highway safety. We therefore agree with this comment in principle. However, we are unable, at this time, to set a time schedule for updating each of these guidelines. As stated above, we intend to review all the regulations that implement section 402, including Part 1204, which will contain the highway safety program guidelines, to determine whether additional revisions need to be made. Any additional revisions will be accomplished in a separate rulemaking action.

(3) Change Accident to Crash

The State of New Mexico suggests that the agencies change their terminology, by referring to a collision of one or more vehicles as a "crash" rather than as an "accident." The State contends that the term "accident" suggests that only factors that are unintentional and unavoidable contribute to a collision, and we know this to be untrue.

The agencies completely agree with this comment, and, in fact, we have tried to use the term "crash" rather than "accident" in this rulemaking and in other agency documents and statements. However, as was pointed out at the Fort Worth hearing where this comment was raised, Congress instructed us to determine those programs which are most effective in reducing "accidents, injuries and fatalities." Accordingly, when referring to our statutory mandate, we have continued to use the term "accident." We encourage New Mexico,

and other members of the traffic safety community to use the term "crash" instead of "accident" where appropriate, for the reason cited above.

(4) Amendments That Would Require Congressional Action

Several respondents, most of them States, object to the earmarking of section 402 funds. The State of Idaho, for example, argues, "the use of 'earmarked' funding categories reduces a state's ability to deal flexibly with its Highway Safety problems. When funds are designated for expenditure only in specific program areas, they cannot be used for other areas where a state's problem may require extra funds. If a state is unable to develop suitable projects to deal with problems in an earmarked area, the funds may accumulate. Pressure then builds to expend these earmarked funds, and low quality projects may be funded in preference to none at all."

New Mexico objects to earmarking of funds, and also the reduction of 402 monies. Mr. Howard Graff, on behalf of the State, testified that these actions "have created some administrative and management problems because it reduces our flexibility to develop and fund projects based on our perceived needs in our particular state." Other respondents also raise the issue of reduced section 402 funds, most often with regard to FHWA's portion of these monies.

The Traffic Improvement Association (TIA) of Oakland County suggests that non-governmental organizations, such as private non-profit groups, should be made eligible for direct funding under section 402. The Pennsylvania Association for Safety Education, Inc. recommends that the agencies consider certain factors (such as the State's per capita number of accidents, miles of roadway, mileage usage and safety belt laws) in their allocation of section 402 funds. One respondent suggests that the agencies' "role be substantially reduced and a highway safety block grant program be implemented."

While we share the commenters' objections to earmarking of 402 funds, the agencies are without authority to act on any of these proposals, unless Congress first amends the laws under which we operate. Congress establishes the agencies' funding limitations for the section 402 program, and has earmarked portions of these funds, notwithstanding the agencies' objections. See, for example, section 1(b) of Pub. L. 98-363, as amended by section 202(b) of Pub. L. 100-17, which earmarks 8 percent of

States' highway safety apportionments for developing and implementing comprehensive programs concerning the use of child restraint systems, and section 5 of Pub. L. 98-363 (codified in 23 U.S.C. 402(k)) which established a 10 percent set aside for traffic records for two years. The agencies do not have authority to apportion section 402 funds in amounts that exceed Congressional limitations, or to disregard any restrictions or earmarkings placed on those funds by law.

With regard to TIA's comment, section 402 does not permit the agencies to distribute funds directly to parties other than the States. The Act requires that funds "shall be used to aid the States to conduct the highway safety programs approved" at the Federal level (section 402(c)). " * * * the Governor of the State shall be responsible for the administration of the program through a State highway safety agency" (section 402(b)(1)). The State highway safety agency and/or political subdivisions may be able to provide support to non-profit organizations and other highway safety professionals.

The factors which must be considered in allocating section 402 funds are described in the Act. Since 1969, the agencies have been required to apportion 402 funds "75 percent in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 percent in the ratio which the public road mileage in each State bears to the total public road mileage in all States." (section 402(c)).

Implementation of a block grant would also require legislation. The roles of the agencies are defined in 23 U.S.C. 402. See, for example, section 402(a), which provides that the agencies are responsible for approving State highway safety programs, designed to reduce traffic accidents and deaths, injuries and property damage resulting therefrom.

Impact Analyses

A. Federalism Assessment

The agencies have considered whether this action has any federalism implications. We have determined that this final rule furthers the principles of federalism established by the Framers of the Constitution while striking an appropriate balance between increased State flexibility and an appropriate level of Federal involvement as required by the enabling legislation for this grant program. Highway safety does constitute a problem of national scope, and for this reason, Congress directed the agencies to determine those

programs most effective in reducing highway accidents, injuries and fatalities. In this final rule, we increase the discretion of the States, by expanding the list of National Priority program areas, which are eligible for section 402 funding. In addition, programs that are not on this list, may also be supported under section 402 under established funding procedures. As discussed earlier in this final rule, we believe, as do the vast majority of commenters who discussed them, that these procedures provide the States with sufficient flexibility to develop their highway safety programs. As stated by New Mexico, " * * * flexibility exists in the existing program for this state to address its primary problem areas and to develop and obtain approval of projects in other areas of highway and traffic safety as the need arises."

B. Economic Impacts

The agencies have analyzed the effect of this action and determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. The rulemaking will not affect the level of funding available in the highway safety program, or otherwise have a significant economic impact, so that neither a Regulatory Impact Analysis nor a Regulatory Evaluation is required. Although not required to do so, the agencies prepared an Evaluation in 1982 to assist them in the rulemaking process. The Evaluation was reviewed by the agencies and an Addendum prepared in association with the NPRM which led to this final rule. These documents have been submitted to the Docket Section, Room 5109, and are available for inspection. Also in association with the 1982 rulemaking process, the agencies prepared and submitted to the public docket, Effectiveness and Efficiency Papers regarding the programs then being considered to be National Priority program areas. These documents are also available in the public docket, Room 5109, Docket Number 81-12, General Reference Section.

C. Impacts on Small Entities

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant economic impact on a substantial number of small entities. States will be recipients of any funds awarded under the regulation and, accordingly, the preparation of a

Regulatory Flexibility Analysis is unnecessary.

D. Environmental Impacts

The agencies have also analyzed this action for the purpose of the National Environmental Policy Act. The agencies have determined that this action will not have any effect on the human environment.

E. Paperwork Reduction Act

The requirement relating to this proposal, that each State must submit a highway safety plan to receive section 402 grant funds, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, this proposed action has been submitted to and approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements have been approved through May 31, 1989; OMB No. 2127-0003.

List of Subjects in 23 CFR Parts 1204 and 1205

Grant programs, Highway Safety. In accordance with the foregoing, Parts 1204 and 1205 of Title 23 of the Code of Federal Regulations are amended as set forth below.

PART 1204—[AMENDED]

1. The authority citation for Part 1204 continues to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

2. The title of Subchapter B is revised to read as follows:

SUBCHAPTER B—GUIDELINES

3. The title of and text in 23 CFR Part 1204, which consists of § 1204.4 (excluding the supplemental materials that follow, which may be amended in a separate rulemaking action on a future date) is amended by removing the term "standard" and "standards" everywhere they appear and by adding in their place the word "guideline" and "guidelines", and by removing the term "shall" everywhere it appears and by adding in its place the word "should".

PART 1205—[AMENDED]

4. The authority citation for Part 1205 is amended to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

5. In § 1205.3 paragraph (a)(1) is revised and paragraph (a)(6) is added to read as follows:

§ 1205.3 Identification of National Priority Program Areas.

(a) * * *
(1) Alcohol and Other Drug Countermeasures.

(6) Motorcycle Safety.

6. Section 1205.3(b) is amended by removing the phrase "Safety Construction and Operational Improvements" and by adding in its place the words "Roadway Safety".

Issued on April 1, 1988.

Diane K. Steed,
National Highway Traffic Safety Administrator.

Robert E. Farris,
Deputy Federal Highway Administrator.
[FR Doc. 88-7544 Filed 4-1-88; 4:43 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-88-1387; FR-2290]

Lead Standards in Water Piping

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's Minimum Property Standards (MPS) for water supply systems to conform those standards to a recent statutory amendment. That amendment prohibits HUD mortgage insurance or assistance to newly constructed residential property that contains a potable water system, unless such system uses only lead-free pipes, solder, and flux.

EFFECTIVE DATE: June 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mark W. Holman, Manufactured Housing and Construction Standards Division, Room 9152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6590. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 109(c)(1) of the Safe Drinking Water Act Amendments of 1986 (Pub. L. 99-339, effective June 19, 1988) (1986 Amendments) prohibits the Department from insuring a mortgage or furnishing assistance "with respect to newly constructed residential property which

contains a potable water system unless such system uses only lead-free pipe, solder, and flux." Section 109(c)(2) states that "lead free"—

(A) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

(B) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

This rule provides that no FHA mortgage insurance or assistance will be given to newly constructed residential property for which a building permit has been applied for on or after June 19, 1988 from the appropriate authority having jurisdiction, if the water supply systems of such property do not meet the lead-free standards set forth in § 200.926d(f)(1)(i).

HUD standards for water piping are now contained in 24 CFR Part 200, Subpart S—Minimum Property Standards. The MPS, in turn, reference standards found in nationally recognized model or acceptable State and local plumbing codes. These codes may not limit lead in water piping to the levels mandated by the 1986 Amendments. Accordingly, the statutory requirement concerning "lead-free" water supply systems is being incorporated into the HUD standards for water supply systems at § 200.926d(f)(1)(i)—the section governing one- and two-family dwellings.

In addition, the provision governing water supply systems in newly constructed multifamily structures is being amended to conform to the statute. 24 CFR 200.927 incorporates by reference in Handbook 4910.1 (*MPS for Housing* (1984 ed. with changes) the minimum property standards for multifamily and care-type housing. Paragraph 615-2.1 of that Handbook will be revised to read as follows:

615-2.1 *General.* Each living unit shall be provided with a continuing and sufficient supply of safe water under adequate pressure and of appropriate quality for all household uses. Newly constructed residential property for which a building permit has been applied for on or after June 19, 1988 from the competent authority with jurisdiction in this matter shall have "lead-free" water piping. For purposes of this Handbook, water piping is "lead-free" if it uses solders and flux containing not more than 0.2 percent lead, and pipes and pipe fittings containing not more than 8.0 percent lead. This system shall not impair the functioning or durability of the plumbing system or attachments.

As noted above, the effective date of the rule will be June 19, 1988, because the authorizing legislation, enacted on June 19, 1986, becomes effective 24

months after the date of its enactment. HUD believes that the deferred effective date of the statute was intended to enable program participants to change the design of water supply systems with as little disruption as possible. Therefore, although the MPS do not now prohibit the use of lead pipes, solder or flux, HUD believes that no change should be made to the MPS regarding lead-free piping before June 19, 1988.

Since this rule implements a statutory directive, the Secretary has determined that public comment is unnecessary and that this regulation should be published as a final rule.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for the applicability of Federal lead-free standards with respect to water supply systems. This provision does not impose any economic burden on small entities beyond that mandated by the new law.

This rule is listed as Item #976 in the Department's Semiannual Agenda of