

7-96-01
II-A-954

MEMORANDUM FOR THE ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: EPA's Legal Authority to Act on
Pending Rule-Making Petitions
Seeking Deferral of Noise
Emission Standards for Medium
and Heavy Duty Trucks

A T T A C H M E N T S

WILMER, CUTLER & PICKERING

Counsel for the Motor Vehicle
Manufacturers Association of the
United States, Inc., and for
Petitioners Ford Motor Company,
General Motors Corporation, and
International Harvester Company

February 16, 1984

ATTACHMENTS

- Attachment A Petition filed by International Harvester Company on September 26, 1983.
- Attachment B Petition filed by General Motors Corporation on September 30, 1983.
- Attachment C Petition filed by Ford Motor Company on December 15, 1983.
- Attachment D Petition filed by the American Trucking Association, Inc., on January 9, 1984.
- Attachment E Federal Register notice of January 27, 1981, deferring the effective date of the 80 decibel standard from January 1, 1982, to January 1, 1983.
- Attachment F Federal Register notice of February 17, 1982, deferring the effective date of the 80 decibel standard from January 1, 1983, to January 1, 1986.
- ✓ Attachment G Excerpts from the FY 1982, FY 1983, and FY 1984 Department of Housing and Urban Development- Independent Agencies Appropriations Acts.
- Attachment H Excerpts from Principles of Federal Appropriations Law, published by the United States General Accounting Office ("GAO").
- Attachment I In the Matter of LTV Aerospace Corporation, 55 Comp. Gen. 321 (1975).
- Attachment J 17 Comp. Gen. 147 (1937).
- Attachment K Matter of Customs Service Payment of Overtime Pay in Excess of Limit in Appropriations Act, 60 Comp. Gen. 440 (May 6, 1981).
- Attachment L Matter of Obligation of Appropriation for Printing -- Commission of Fine Arts, Decision B-197289, -- Decisions of the Comptroller General 386, 388-89 (Apr. 14, 1980).
- ✓ Attachment M Excerpts from the FY 1984 House Appropriations Subcommittee Report.

- ✓ Attachment N Excerpts from the FY 1982 House Appropriations Subcommittee Hearings on the HUD-Independent Agencies Appropriations (Part 5) (Environmental Protection Agency).
- ✓ Attachment O Excerpts from the FY 1982 Senate Appropriations Committee Hearings on the HUD-Independent Agencies Appropriations (Part 1).
- Attachment P Excerpts from the FY 1983 House Appropriations Subcommittee Hearings (Part 3).
- Attachment Q Excerpts from the FY 1984 House Appropriations Subcommittee Hearings (Part 4).
- Attachment R Excerpts from the FY 1983 Senate Appropriations Committee Hearings (Part 1).
- Attachment S Excerpts from the FY 1983 Senate Appropriations Committee Report.
- Attachment T Federal Register notice of December 28, 1982, revoking product verification testing, reporting, and recordkeeping requirements for certain products.
- Attachment U Federal Register notice of June 13, 1983, announcing technical amendments to the December 28, 1982, regulations.
- Attachment V Federal Register notice of July 15, 1983, rescinding noise emissions regulations for garbage trucks.
- Attachment W Federal Register notice of October 17, 1983, announcing an action withdrawing certain products from EPA's list of major noise sources.
- Attachment X Matter of Customs Service Payment of Overtime Pay in Excess of Limit in Appropriation Act, 35 Comp. Gen. 356 (Dec. 12, 1955).

1. C₁ C₂ C₃ C₄ C₅ C₆ C₇ C₈ C₉ C₁₀ C₁₁ C₁₂ C₁₃ C₁₄ C₁₅ C₁₆ C₁₇ C₁₈ C₁₉ C₂₀ C₂₁ C₂₂ C₂₃ C₂₄ C₂₅ C₂₆ C₂₇ C₂₈ C₂₉ C₃₀ C₃₁ C₃₂ C₃₃ C₃₄ C₃₅ C₃₆ C₃₇ C₃₈ C₃₉ C₄₀ C₄₁ C₄₂ C₄₃ C₄₄ C₄₅ C₄₆ C₄₇ C₄₈ C₄₉ C₅₀ C₅₁ C₅₂ C₅₃ C₅₄ C₅₅ C₅₆ C₅₇ C₅₈ C₅₉ C₆₀ C₆₁ C₆₂ C₆₃ C₆₄ C₆₅ C₆₆ C₆₇ C₆₈ C₆₉ C₇₀ C₇₁ C₇₂ C₇₃ C₇₄ C₇₅ C₇₆ C₇₇ C₇₈ C₇₉ C₈₀ C₈₁ C₈₂ C₈₃ C₈₄ C₈₅ C₈₆ C₈₇ C₈₈ C₈₉ C₉₀ C₉₁ C₉₂ C₉₃ C₉₄ C₉₅ C₉₆ C₉₇ C₉₈ C₉₉ C₁₀₀



INTERNATIONAL HARVESTER

DONALD LEANOR
Chairman of the Board and
Chief Executive Officer

September 26, 1983

The Honorable William D. Ruckelshaus
Administrator
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Ruckelshaus:

Attached to this letter is a petition in which International Harvester Company requests that the 80 dBA noise standard be deferred beyond the January 1, 1986 effective date until such time as the air emissions standards that were until recently scheduled to be put into effect for the 1986 model year are actually implemented.

In announcing the EPA's three-year delay of the 80 dBA standard in February 1982, the agency cited the need to provide near-term economic relief to the truck industry and "to permit manufacturers to align and economize the design requirements attendant to the 80 dBA standard with improved fuel economy designs and federal air emissions standards anticipated in the 1986 timeframe."

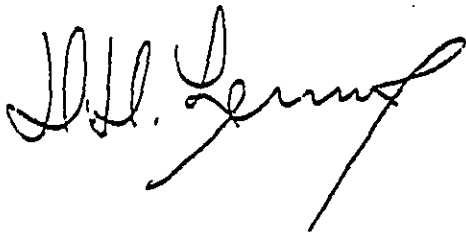
As you know, the economic condition of the truck industry has deteriorated considerably since February 1982. In fact, sales for 1983 are running well below levels projected at that time, and the recovery in the truck markets that had been hoped for has not yet materialized. Since IH's other major business—agricultural equipment—is even more depressed than the truck business and its prospects for recovery are also more remote, any additional expense that diminishes the profit potential of the truck operations has a disproportionate impact on the entire company.

During the 1985-88 period, IH and other heavy-duty engine manufacturers expect to incorporate major modifications that will significantly enhance fuel economy. However, further modifications must be made to incorporate the technology that will be required to meet the 1989 air emission standards, and those changes will in turn make necessary further modifications to meet an 80 dBA noise standard. Deferring the implementation of the 80 dBA standard to coincide with the introduction of the 1989 engines would save manufacturers the additional cost needed to bring the interim, fuel-efficient 1985-88 engines into compliance with the more stringent noise standard.

Finally, the lower than anticipated truck sales volumes mentioned above alter any previous cost/benefit analysis of the 80 dBA standard. The per-vehicle cost of compliance is increased, while the actual benefit to the community at large is reduced because fewer new and quiet trucks will be in operation than was originally expected.

I urge you to give favorable and expeditious consideration to this petition. If you or your staff would like to discuss any aspect of this petition further, please contact me or Mr. Dean Stanley, Vice President, Engineering, Truck Group, International Harvester Company, at (219) 461-5907.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "W.H. Lenz". The signature is written in dark ink and is positioned below the typed name "W.H. Lenz".

INTERNATIONAL HARVESTER COMPANY

**Petition for Amendment
Title 40 Code of Federal Regulations 1, Part 205
Noise Regulation for Medium and Heavy Trucks**

**Presented to
The Honorable William D. Ruckelshaus
Administrator, U.S. Environmental Protection Agency
September 26, 1983**

International Harvester Company herein petitions the Administrator to grant an additional interim deferral of the 80 dBA noise standard beyond the current January 1, 1986 effective date.

The February 17, 1982 Federal Register contained EPA's previous rationale for deferring the implementation of the standard from 1983 to 1986. The information contained in this petition demonstrates that the same reasons for which EPA decided to grant the earlier three-year delay still exist--perhaps even to a greater degree. IH therefore requests an additional interim deferral of the standard. IH firmly believes that EPA's own data demonstrate that an additional deferral will not impose an undue risk to the public's health and welfare during this interim period.

EPA stated in the February 17, 1982 Federal Register that the purpose of its three-year delay (from 1983 to 1986) was twofold:

"First, to provide near-term economic relief to the truck industry by allowing them to temporarily divert those resources that would otherwise be used to comply with the 1983 80 dBA standard to help meet their near-term economic recovery needs; and second, to permit manufacturers to align and economize the design requirements attendant to the 80 dBA standard with improved fuel economy designs and Federal air emissions standards anticipated in the 1986 timeframe."

EPA's above-stated reasons for the previous delay are even more applicable to the truck industry today than they were in February 1982, in view of the following:

1. The economic condition of the truck industry has drastically deteriorated since the February 1982 deferral; and
2. The air emission standards that were scheduled to become effective in the 1986 timeframe will probably not be implemented until the 1989 timeframe.

The following additional comments are intended to further emphasize the need for the additional delay being requested:

1. Depressed State of the Truck Industry

To date, the truck industry has not shown any significant recovery from the recession that started in 1980. The motor carrier industry has just suffered its worst financial results in history, with over 43 per cent of ICC-regulated carriers showing an operating loss in 1982. In addition, over 300 major carriers have gone out of business altogether, are in Chapter 11 bankruptcy, or have reduced or altered service since July of 1980 (American Trucking Association, Inc., "What Is The Industry's Financial Condition?", copy attached; also, see "Truckers On The Skids", Industry Week, July 25, 1983, copy attached).

Largely as a result of this situation in the trucking industry, truck manufacturers have seen their sales volumes plummet. U.S. medium/heavy truck industry sales for 1982 were 54.5 per cent lower than 1979 sales (according to MVMA Motor Vehicle Facts & Figures, 1983) and sales thus far in 1983 have not improved. The decline for Class VIII sales has been even more dramatic. Projected 1983 sales are 73,000 units compared to 192,389 units in 1979--a reduction of 62.1 per cent. This overall decline is even more significant when compared to the

sales volumes that were being projected at the time EPA was petitioned by industry for the previous delay. At that time, total 1983 Class VI through VIII sales were projected to be approximately 315,000 units, of which Class VIII sales were projected at 185,000 units (See IH letter dated December 23, 1980, copy attached). Thus, current estimated 1983 Class VI through VIII sales are running at 38 per cent (183,000 versus 315,000), and Class VIII sales at 38.8 per cent (73,000 versus 187,800), of the earlier sales projections.

IH has continued to update projected vehicle consumer cost increases for the 80 dBA effects. This task is complicated by the uncertainty as to exactly which engines will be in production in 1986 and the length of time they will remain in production. However, we can identify two different cost scenarios that will provide a probable range of the increased consumer cost. Our cost projections furnished to EPA by letter of December 23, 1980 indicated a cost penalty of \$360 for medium-duty diesels, which are mostly Classes VI and VII (19,501 to 33,000 lbs. GVW), and \$515 for heavy-duty diesels in Class VIII (above 33,000 lbs. GVW). We recently updated the cost scenario of maintaining our basic existing engine lineup for 1986, and the respective projections are \$295 for medium and \$435 for heavy diesels. We believe the actual costs would fall somewhere within the range of these two scenarios.

2. International Harvester's Financial Status

In recent years, International Harvester Company has suffered a dramatic series of losses and a significant decline in its traditional markets. As shown below, the Company's last profitable year was 1979, when worldwide net income reached \$270 million on record sales of \$8.4 billion, with substantial record losses occurring each year thereafter:

	<u>Sales</u> (Billions)	<u>Net Income (Loss)</u> (Millions)
1979	\$8.4	\$370
1980	6.3	(397)
1981	7.0	(393)
1982	4.3	(1,638)
1983 (Forecast)	3.7	(400+)

Contributing factors to IH's depressed financial condition include a six-month strike in 1980 by its major union, the United Auto Workers; record-high interest rates; and a general recession that started in 1980, leaving IH with excess production capacity. For the first time in history, all three of IH's principal markets (trucks, agricultural equipment, and construction machinery) were depressed on a worldwide basis at the same time.

In an effort to minimize cash flow losses, IH management implemented drastic cost-cutting measures. As part of this effort, the company is concentrating its resources on the following core business: Medium and heavy duty trucks in North America, and agricultural equipment and engines in North America and Western Europe. Operations not related to these core product lines are being disposed of. These include major actions such as the sale of its construction equipment business to Dresser Industries in November 1982, the sale of the axle/transmission operations to Dana Corporation in late 1982, the consolidation of U.S. truck manufacturing operations at its Springfield, Ohio plant (leading to the closing of the Fort Wayne, Indiana truck assembly operations), and the closing of or announced intention to sell or close plants in Louisville, KY; Chicago, IL; Canton, IL; and Shadyside, OH. IH also sold operations in New Zealand, the Netherlands, and the Philippines, and has closed plants in Australia and Great Britain.

Although IH has made substantial progress in downsizing its operations and reducing its break-even point, the company remains dependent on an upturn in its major markets for its eventual survival. Recovery in the truck market, which the company had forecast for 1983, has not materialized to the extent earlier predicted.

During this same time period, and as a result of the U.S. economic recession, the 1980 deregulation law and the 1982 Surface Transportation Assistance Act, the trucking industry has experienced, and is continuing to experience, the greatest structural changes in its history. As a result, IH's limited available resources must be focused on responding to major changes in market conditions and demand. Implementation of the 80 dBA noise standard in 1986 will divert manpower and critical capital resources that would otherwise be expended to meet other necessary customer needs in 1984 and succeeding years.

Since our other core business (manufacturing agricultural equipment) is substantially more depressed than the truck business, the performance of IH's Truck Group is particularly crucial to the company's ability to survive. Therefore, healthy profitability of the Truck Group is being looked to as a necessary means of maintaining liquidity of the corporation until such time as agricultural sales recover. This makes it even more important that the Truck Group be able to concentrate its available resources on general business opportunities. A further delay of the 80 dBA standard will be quite beneficial to IH, by helping it to conserve and effectively utilize its vital resources.

3. Present and Future Engine Designs

In the February 17, 1982 Federal Register, EPA stated that one purpose of the three-year delay was to permit manufacturers to align, and thus economize, the design requirements of the 80 dBA standard with improved fuel economy designs and federal air emission standards anticipated in 1986.

In July 1982, EPA heard testimony on the non-availability of automatic regenerators for particulate oxidizer traps and, therefore, the lack of available technology to meet a stringent heavy-duty engine particulate standard in 1986. Manufacturers indicated that such technology would not be available at least until the 1988-89 timeframe, if then.

Engine suppliers at this time cannot describe the precise engine changes needed in 1988-89 to meet the new air emission standards. However, they are convinced that low flow cooling, electronic fuel controls, aftercooling, and charge air cooling are some of the technologies that will be required. Coincident with the requirement to reduce emissions is the need to improve fuel efficiency. Since many of the above technologies improve fuel economy, engine manufacturers have design and development programs under way to put them into production prior to enactment of the anticipated air emissions regulations. Due to the complexity and scope of the programs, most manufacturers plan to incorporate these new features into their engine families between 1985 and 1988. Even with the new technology in production, they believe that further calibration changes and redesign of some components and/or systems will be necessary to enable them to meet expected future air emission requirements, except for the particulate standards.

With the new interim engines planned for introduction at various dates between 1985 and 1988, old engine designs will be dropped from production. Thus, implementation of the 80 dBA standard on January 1, 1986 would require use of many noise components and/or systems with a life expectancy of only one or two years. The engineering and manufacturing expense needed to develop and produce these systems would not be recovered. With the interim fuel-efficient engines being introduced between 1985 and the time new air emission engines are implemented, the additional complexity and expense needed to bring these interim engines into compliance with the more stringent noise regulations could be avoided with the delay being requested herein. Deferring the implementation date of the 80 dBA standard to coincide with the new engines designed to meet the expected air emission standards would prevent considerable duplication of effort and, therefore, eliminate associated manufacturer and consumer costs.

4. Near-Term Health and Welfare Effects

An additional deferral in the 80 dBA standard will have very little effect on the health and welfare of the populace affected by the noise from medium and heavy duty trucks.

As previously stated by IH, a sales-weighted sound level analysis of our total truck production for 1979 indicated an average noise level of 80.5 dBA. Thus, as new trucks continue to replace old vehicles the average community noise level will continue to decrease. This is not to infer that compliance with the 80 dBA standard will be easy. In order to assure compliance with a not-to-exceed 80 dBA standard, production units will have to be designed to achieve an acceptable

margin of safety under the standard. As discussed earlier, new and revised components and/or hardware will be necessary and will be reflected in an increase in the purchase price of the vehicle.

At this time, it is not the intent of this petition to debate whether or not the community noise benefits are commensurate with the associated costs of the 30 dBA standard. However, we believe a comment is in order, particularly since a consensus on that issue has not been established. As noted earlier, current truck sales are drastically lower than the volumes on which the cost/benefit analysis was based (i.e., Class VIII sales for 1983 are 61.2 per cent less than projected as noted earlier). It would appear that this development will result in fewer total benefits to society than originally projected by EPA, thus making the standard less cost beneficial.

Conclusions

In summary, International Harvester Company requests that you give favorable consideration to our request for an additional deferral of the 1986 dBA standard. Considering that little risk to the public's health and welfare is involved compared to the cost increases and the depressed state of the trucking industry, and in particular IH's financial condition, we believe that such action is warranted. It will preclude the need for redundant vehicle certification efforts, permit redirection of available limited resources to more productive programs, and thus contribute to IH's assurance of survival.



INTERNATIONAL HARVESTER

December 23, 1980

Mr. David G. Hawkins
Assistant Administrator
U. S. Environmental Protection Agency
Washington, D.C. 20460

Subject: Petition for Reconsideration -
1982 Medium and Heavy
Truck Noise Emission
Regulation.

Dear Mr. Hawkins:

A meeting was held on December 18, 1980 with combined EPA and IH staff representation to discuss and clarify the various aspects and questions raised in your November 18, 1980 letter to International Harvester Truck Group President Mr. J. Patrick Kaine. A copy of the presentation is attached for your information. During the meeting, several other requests were made for further clarification of the issues presented in our second submission to Mr. Costle dated October 2, 1980. The answers to these additional issues follow.

1. Additional Cost Items

It was noted in the December 18, 1980 meeting that the IH reported National Economic Impact values included only the vehicle purchase price increase to the consumer in constant 1981 dollars. As such, several additional cost items, as mentioned in the petition submissions and in the meeting, must be considered in an aggregate analysis of the economic impact.

(A) Transmission Cover Cost Effect

As noted in the December 18 meeting, our current analysis suggests an approximate additional \$2.8 to \$3.5 million dollar impact to the economy due to the added usage of transmission covers. This was not previously included in the EPA Background Document.

(B) Inflationary Impact

The National Economic Impact values were as previously noted in constant 1981 dollars. Therefore, the anticipated inflationary increases for the years 1982, 1983, and 1984

should be included. This would represent an additional accumulative impact of over \$40 million for the three year period noted.

(C) Fuel Loss

The economic impact of the fuel lost due to weight increase of the 80 dB(A) components was likewise not included in our National Economic Impact values. As reported previously, IH estimated the fuel lost economic impact based on the sales weighted, 10 typical vehicle scenario to be \$1,785,000 in 1982, \$2,482,000 in 1983 and \$2,973,100 in 1984. We now believe these values to be fairly conservative but necessary additions to an overall analysis. The fuel losses noted here do not include losses due to engine backpressure and air restriction increases.

(D) Increased Maintenance Costs

The initial EPA Background Document did not consider the transmission cover issues. As such, the EPA maintenance cost analysis did not account for this situation. International Harvester has determined that an additional service time of one-half hour is required to remove and replace the proposed transmission cover. This factor should be added to the complete analysis.

(E) Other Items

The following items will represent further economic increases due to the 80 dB(A) regulation but, due to time constraints, were not analyzed by IH.

- (a) Increased Operational Costs due to the lost revenue effect of vehicle weight increase because of the 80 dB(A) abatement components.
- (b) Lost performance costs due to engine back pressure and air restriction increases.

2. GVW Classifications

In reference to the vehicle classification differences between the EPA Background Document and the IH submissions, the following information is provided. This data classifies US Industry Retail Sales projection in a GVW category for the years 1982, 1983, and 1984.

Calendar Year
U.S. Industry Retail Sales Projections (000)

<u>Classification</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
<u>GVW Class 8</u>			
Heavy	145.9	166.2	184.7
Med XB Gas	3.0	2.8	2.3
MRD	<u>15.1</u>	<u>18.8</u>	<u>22.3</u>
Total	164.0	187.8	209.3
<u>GVW Class 7</u>			
Med XB Gas	26.6	24.9	20.3
MRD	<u>53.8</u>	<u>66.8</u>	<u>79.1</u>
Total	80.4	91.7	99.4
<u>GVW Class 5,6</u>			
Med XB Gas	29.5	27.7	22.6
MRD	<u>6.8</u>	<u>8.5</u>	<u>10.0</u>
Total	36.3	36.2	32.6

Key

MED = Medium Duty
 XB = Except Bus
 MRD = Mid Range Diesel

The above data excludes buses as noted. The previous data as described in our December 18 meeting did include buses based on the scenario that many of the items released for production in the base truck models would also be included in the bus packages. The above data is a calendar year analysis; whereas, the previously presented data was based on our corporate fiscal year.

3. Component Cost Breakdown

The following analysis represents an approximate breakdown of the various components of the TR cost per unit values presented in our October 8, 1980 submission.

Percentage Analysis
83 dB(A) to 80 dB(A)
10 Typical Vehicle Scenario

	<u>Med. Duty Gas</u>	<u>Med. Duty Diesel</u>	<u>Heavy Duty Diesel</u>
Reported Cost/Unit:	\$120	\$360	\$515
Cost Component:			
(a) Engine	---	21%	8%
(b) Fan Clutch	64%	---	4%
(c) Sump Covers	---	17%	29%
(d) Exhaust	11%	9%	13%
(e) Shielding	25%	38%	15%
(f) Transmissions	---	15%	31%
Total	100%	100%	100%

4. Deadlines

As noted in our December 18th meeting, the next critical commitments date is February 1st 1980. After February 1, cooling commitments will be made to our suppliers to ensure adequate lead time for production. If an affirmative decision is made prior to February 1, 1980 to withdraw the 1982 80 dB(A) regulation, the deferred costs to International Harvester are estimated to be \$6,520,000. These costs include cooling expenditures, engineering costs, manufacturing start up expenses and obsolescence factors for both the Truck and Engine Divisions of International Harvester. In addition, an affirmative response to our petition will avoid significant consumer cost increases in an already severely overburdened economy.

We believe the above information, that was presented in our combined staff meeting of December 18, has effectively answered your questions relative to our second submission. We thank you for the opportunity to meet with your staff and are confident an affirmative answer to our petition will be expeditiously forthcoming.



F. L. Krall
 Manager, Technical Legislation
 International Harvester Company
 (219/4615623)

cc:

cc: Henry Thomas, EPA

Attachment

What is the industry's financial condition?

CONTINUED FINANCIAL AND BUSINESS DECLINES FOR ICC REGULATED MOTOR CARRIERS OF PROPERTY IN 1982 PRODUCE WORST YEAR IN HISTORY

The motor carrier industry in 1982 suffered its worst financial results in history, seeing its composite operating ratio (operating expenses as a percent of gross revenues) rise to 98.29 and its income after tax margin fall to one-half of one percent (50 cents per \$100.00 of revenues). The 1982 results reflect a trend in deteriorated earnings and financial health that has been unending since 1977, and the present dismal results eclipse those of 1960, the previous low point in industry earnings.

With declines experienced in all quarters of 1982 from the comparable quarters of 1981, the 1982 results show a significantly deteriorated industry position. Based on 497 Class I and II carrier submissions to the ICC, tonnage of 282.63 million in 1982 was off 10.79 percent from 328.30 million tons in 1981. Vehicle miles declined 7.17 percent to 9.19 billion from 9.90 billion miles.

Revenues for the 497 carriers totalled \$19.34 billion, a decline of 3.76 percent from \$20.52 billion in 1981. Expenses declined to \$19.01 billion from \$19.78 billion. Since the expense decline of 3.88 percent was less than the revenue slippage, net carrier operating income fell -- to \$329.84 million from \$745.64 million, or by 55.76 percent. Ordinary income before taxes fell by 64.84 percent to \$227.11 million from \$646.22 million. With income taxes taking over 57 percent of these earnings, ordinary income after taxes was \$97.56 million in 1982, 73 percent lower than the 1981 earnings of \$393.83 million. The full year

(over)

1982 operating ratio was 98.29, compared to 96.37 in 1981, and the profit margin was 0.50 percent (50 cents for every \$100.00 of revenues) compared to 1.92 percent in 1981.

For the year as a whole, 40 percent of the individual carriers had operating ratios of 100 or above, indicating operating losses. Based on final net, almost 43 percent of the carriers ended 1982 with a net loss. In the fourth quarter of 1982 specifically, 59 percent of all carriers experienced losses in operating their trucking business. This is in addition to the 300 major carriers (employing 55,800) which have gone out of business altogether, are in Chapter 11 bankruptcy or have reduced or altered service since July of 1980.

Of the top 100 carriers by revenue, 45 had net losses in 1982. The profit margin of these firms was 0.42 percent and their return on equity was 2.19 percent in 1982 compared to 11.10 percent in 1981.

April 1983

American Trucking Associations, Inc.

Last year, the trucking industry's profits disappeared. Some of the big guys are still making money, but many carriers are veering toward bankruptcy—or are already in the ditch. Is there a trucking shortage down the road?

TRUCKERS ON THE SKIDS

BY BRIAN S. MOSKAL

The nation's trucking industry is up to its axles in trouble.

Although passage last year of the Surface Transportation Act of 1982 focused attention on a long-term transportation challenge—rebuilding bridges, highways, and other elements of the decaying U. S. infrastructure—the over-the-highway freight haulers are more concerned with an immediate problem: survival.

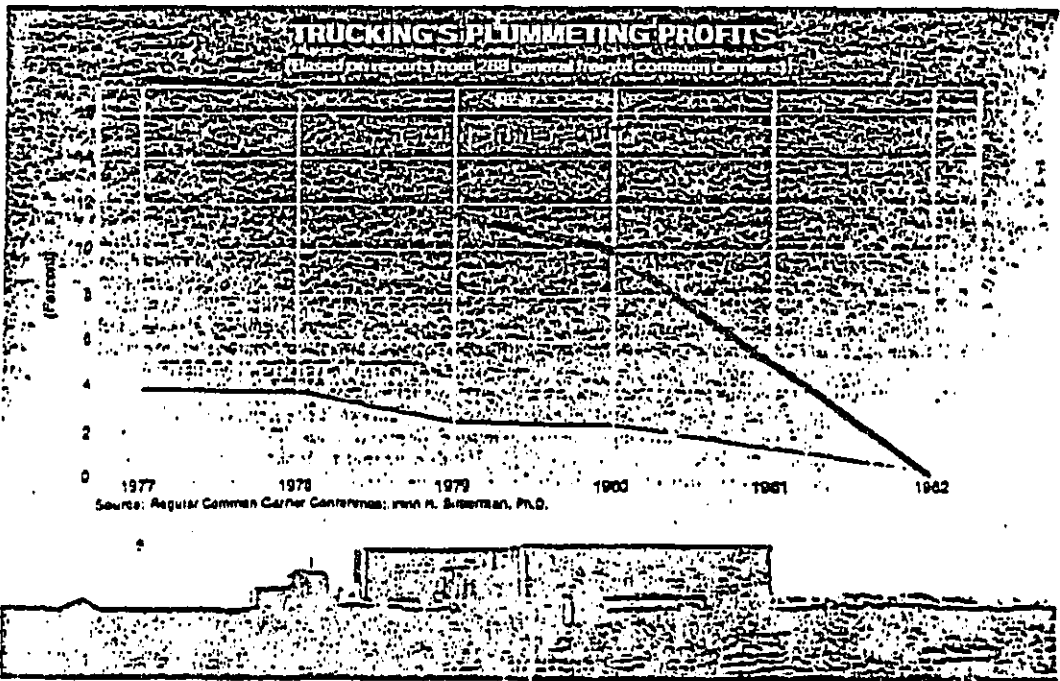
The advent of a more competitive deregulated market and the agonies of a four-year recession have clamped the trucking industry in the jaws of a high-fixed-cost/excess-capacity vise. Between January 1979 and November 1982 a total of 63 general-freight motor carriers went out of business—nearly one-fourth of the 258 firms included in the national trucking industry data base developed by Arthur Andersen & Co. Even big names like Wilson Freight Co., Spector Red Ball, Hemingway Transport, and—most

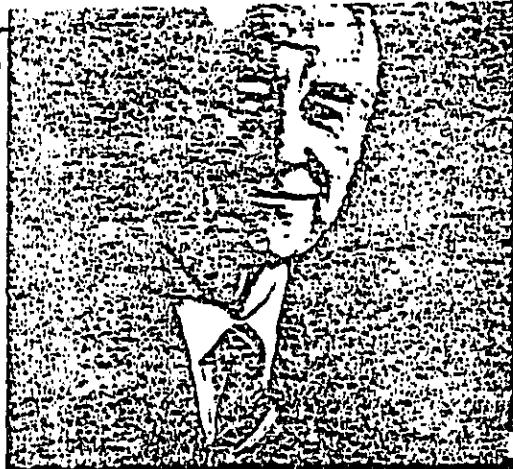
recently—Gordon Transports Inc. have wound up in Chapter 11 bankruptcy proceedings.

Excess capacity began to develop when the Motor Carrier Act of 1980 enabled trucking firms to use their equipment more efficiently. And the recession idled even more tractor-trailers as traffic levels dropped 30% below the 1979 peak.

The result has been some heavy price-cutting. Shippers now enjoy better and more-individualized service at rates no higher than they were paying two years ago. But analysts warn that this won't last. When the current shakeout is over—some think it will continue another two years—rates will begin to shoot upward.

Shrinking returns. The recession that began in 1979 was accompanied by a series of Interstate Commerce Commission administrative rulings that increased competition while holding down rate increases—an apparent attempt to force the trucking industry to embrace deregulation. The policy had two effects. First, it made managing a





J. Harwood Cochran

**"If the economy comes back strong
... there won't be enough trucks to
handle the freight"**

trucking company more difficult—putting a premium on the quality of individual managements. Second, it greatly reduced the trucking industry's profitability.

Prior to 1978 the average return on equity for the industry was about 17%. But, since then, trucking profits have virtually disappeared. A study commissioned by the Regular Common Carrier Conference of the American Trucking Assn.—and released earlier this year—found that:

- 1982 was the fourth successive year of economic recession for the trucking industry, exceeding the duration of the downturns in many other sectors.

- Motor carriers' after-tax return on equity slipped to 5.0% in 1981—and to zero last year. This compares with a 13.7% return for manufacturing industry in 1981 and an estimated 9.7% last year. (A slight, almost negligible, improvement was recorded in the first quarter of this year; data indicate that the 500 largest carriers showed a combined profit of less than 1%—compared with a combined loss in the first quarter of 1982.)

- The deterioration of general-commodity-trucking earnings has affected carriers of all sizes.

- The market share of the very largest motor carriers has increased significantly in recent years. But the earnings of even these carriers are far from adequate. In fact, of the carriers ranked among the top ten as of Dec. 31, 1981, five reported operating deficits in the first nine months of 1982, and one—T.I.M.E.-D.C. Inc., Lubbock, Tex.—went bankrupt.

- Since early 1979, carriers representing 14.1% of total industry revenues have gone out of business; and studies indicate that carriers accounting for an additional 35.4% of total revenues are candidates for failure.

Taken together, the results of the study raise important questions as to the continued viability of the motor-carrier industry," says Dr. Irwin H. Silberman, an economic and financial consultant who authored the study. "It appears that, when the economy finally recovers, the industry will have difficulty financing needed new and replacement equipment."

Capacity crunch looms. Dr. Silberman, president of Irwin H. Silberman & Associates Inc., Potomac, Md., warns that shippers may eventually have to pay a high price for

the short-run benefit of lower freight rates. "If [the current price-cutting] is destroying the carriers, what is the shipper getting?" he asks.

The facts point to a deterioration in trucking-industry capacity. Dr. Silberman and others point out. An analysis by the Bethesda, Md.-based Transportation Div. of Booz, Allen & Hamilton Inc. shows that, just to maintain constant capacity levels, the U. S. transportation sector will need capital in excess of \$56 billion (1980 dollars) each year through 1990. Of that total, for-hire trucking will require \$6.76 billion annually, while private carriage will require \$34.2 billion per year.

But investments have been falling far short of the need. And equipment acquired in better times is now underutilized or inappropriate for shifting markets. The problem, notes a Booz, Allen report, is "insufficient profits to fund equipment investments. Even under the more-secure regulated environment, the trucking industry had difficulty raising the \$30-plus billion [needed annually]."

"What we are seeing is the graying of the trucking industry's capacity," says William M. Legg, a partner and transportation specialist with Alex Brown & Sons Inc., a Baltimore investment-banking firm. "The quality of the existing capacity in terms of age and productivity has been diminished."

Shipments of truck-trailers recorded by the Truck Trailer Manufacturers Assn., Alexandria, Va., show a decline from 241,000 in 1979 to 95,000 last year. And a forecast by Alcoa sees trailer shipments rising from 100,000 this year to 170,000 in 1986, still well below the 1979 peak.

Short life. Despite a cumulative 50% increase in the cost-of-living index since 1978, the current-dollar value of the trucking industry's productive capacity has remained flat. Little new investment is being made, and depreciation is being used to reduce bank debt, rather than to replace rolling stock.

That may seem all well and good, in light of the current excess capacity. But it should be remembered that a truck doesn't last very long—normally only seven years at 100,000 miles a year of interstate use. Consequently, carriers can't live off their depreciation forever. And the idled trucks don't really represent much of a reserve, since many of them are being cannibalized for parts to keep other trucks on the road.

Coupled with short equipment life, inadequate return on investment can reduce industry capacity quickly. "If you adjust the rate of return for inflation, the industry has been running a real-dollar deficit now for more than four years," says Alex Brown's Mr. Legg. "That deficit will show up in a greatly diminished ability to replace obsolete capacity—a particularly important point because the newer equipment is both more fuel-efficient and more productive under the new size and weight laws."

(The Surface Transportation Act of 1982 permits 80,000-lb trucks and "twin" trailers on interstates and other designated roads. In addition, maximum truck width has been increased from 96 in. to 102 in. Some transportation experts estimate that the greater length and width could increase productivity by 25%.)

Hidden problem. Since 1978 the trucking industry's capacity has shrunk by nearly 30% in real-dollar terms, Mr. Legg calculates. And unless the industry's rate of return improves, more capacity will be lost through business failures and equipment obsolescence.

A capacity shortage could become evident within the next two or three years, some analysts suggest. But the problem is not yet widely apparent because today's depressed tonnage levels mask the underlying shrinkage. The current excess capacity, however, could evaporate quickly as: An improving economy boosts tonnage, ship-

pers reduce private fleets to take advantage of lower rates and more responsive service from common carriers, and consolidation continues.

Although most operators are generating a marginal return at best, a small group of carriers has been enjoying adequate-or-better profitability. (See table on Page 41.) Last year, for example, Roadway Services Inc. reported \$76 million in net income—a 6.6% return on sales. And Consolidated Freightways Inc. maintained a 4.6% margin with \$54.8 million in earnings.

Carriers with strong balance sheets and solid management teams have been picking up market share as other carriers have faltered. For example, the market share for the top ten carriers grew from 34.7% in 1976 to about 42% in 1982.

That trend is likely to continue. "Because rates won't increase quickly," says Mr. Legg, "we expect a significant number of carriers that have been 'barely holding on' to leave the business. The traffic that is gained through consolidation, combined with diversion from private carriage and additional tonnage from economic growth, will eventually put a strain on the system. We believe that the trucking industry will become capacity-constrained in the next three to four years—much as it was in 1968, 1973, and 1978."

Mixed opinions. Not all trucking-company executives agree that a serious capacity shortage is likely. But J. Harwood Cochrane, chairman of Overnite Transportation Co., Richmond, Va., is among those who think it's a possibility.

"Yes, if the economy comes back strong—say a 16% upturn in the next 16 months—there won't be enough trucks to handle the freight," Mr. Cochrane says.

However, two other trucking executives and a consultant are more sanguine. Bob Johnson, president of Transus Inc. (formerly Georgia Highway Express), Atlanta, says: "We don't feel that it's the end of the world. There is a crisis in the trucking industry, but a lot of companies did well in 1982. I personally don't see a poor transportation future for the nation. But those carriers that went into the recession with a heavy debt structure and slim profits are in trouble now."

Earl N. Hoekenga, the former chairman of Ryder Truck Lines Inc., adds: "I don't think we'll ever reach a point where we don't have enough trucking capacity. Somebody is always waiting in the wings to provide truck service." Mr. Hoekenga, who is now president of Bridgestone Inc., a transportation leasing and consulting firm in Jacksonville, Fla., points out that companies like Consolidated, Roadway, and Ryder "will find ways to expand into markets where other trucking companies are floundering."

And Fred H. Tolan, traffic counsel for the Pacific Northwest Traffic League, a group of 1,500 shippers, also downplays the potential for a trucking shortage. "Everybody has heard about it. Truckers have been talking about it since the recession and deregulation," he says. "But I don't see it. I have faith in the American free-enterprise system. Rates will go up and that will take care of the industry's capital needs. I'd put those fears on the back burner—way back on the back burner."

BANKERS GETTOUGHER

Whatever the prospects for a capacity crunch, many individual carriers certainly face a fiscal crunch. For one thing, interest costs have become burdensome. In 1976 the industry as a whole paid \$62.5 million in interest—or about one-eighth of its \$671.9 million in income that year, the Silberman study reveals. But in 1981, interest costs rose to \$207.6 million, or nearly one-half of its \$444.5 million in income.

One result is that bankers are taking a more rigorous look

at trucking firms' balance sheets than they did in the days of regulated trucking. In the past, truckers could cite their "operating rights" as an asset when seeking a loan. But those rights—certainly an intangible asset—vanished with the Motor Carrier Act of 1980.

"The trapdoor has opened underneath the trucking industry due to deregulation," says one midwest banker. "Before deregulation, we looked at a trucker's assets—not his cash flow."

Now, banks want to know if a trucker has carved out a market niche. They want to see a five-year cash-flow analysis. They want to know whether the carrier is a high-cost high-service or a low-cost low-service company. And they evaluate managerial skill in deciding whether or not to grant a trucking company a loan.

"We're trying to be more of a strategic lender to the trucking industry," another midwest banker says candidly. "We ask ourselves whether a trucking company has focused on its market strengths. You can't be a Braniff Airways and be something to everyone."

Honeymoon over? Capital formation, certainly, has become more difficult for the weaker carriers, says an East Coast bank executive. "Truckers aren't buying as many new tractor-trailer combinations as they would in healthier economic times."

Bank officials point out that if they were to stop lending to truckers, the equipment vendors might step in to prop up equipment sales. But truckers aren't particularly happy

"Companies that account for about half of the capacity in the trucking industry are in dire straits"

about that prospect, since vendors typically impose higher finance charges than do banks.

At least one midwest bank is taking a novel approach in issuing loans to trucking companies. It is insuring that the equipment supplier take 5% to 15% of the credit risk; and if the bank repossesses the equipment, the vendor must take responsibility for reselling the equipment.

"If the honeymoon is over in the trucking industry, then everybody—including the banks—must move aggressively to determine which companies will be around the longest," says one banker.

Not only have carriers found it harder to borrow money for new equipment, but also less of their internally generated cash flow has been reinvested, Dr. Silberman observes. Capital spending "declined precipitously" in 1980 and 1981, he notes, as companies diverted earnings to reduce debt incurred between 1976 and 1979. "Indeed, long-term debt declined by \$338.5 million from the end of 1979 to the end of 1981," he points out.

Outlook. Near-term, the prospects for a return to adequate profitability are scant. And that doesn't augur well for renewed capital investment.

Mr. Legg at Alex Brown believes that the industry needs a 5% to 10% return on equity, after adjustment for inflation, to be able to purchase new plant and equipment. "The trucking industry hasn't had a return that has even covered the rate of inflation since 1978," he asserts. "I think the [capacity] shortage will come before the returns come in for the truckers."

Dr. Silberman is even more pessimistic. "This industry needs a return on equity, after taxes, of 15% to 20% for five years to repair much of the damage that has occurred in the last five years," he says. "Companies that account for about half of the capacity in the trucking industry are in dire straits. It's a real question how long the industry can provide service under these circumstances." ■



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Environmental Activities Staff
General Motors Corporation
General Motors Technical Center
Warren, Michigan 48090

September 30, 1983

Bruce ANCKER-JOHNSON
Vice President

The Honorable William D. Ruckelshaus
Administrator
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Ruckelshaus:

Subject: Petition for reconsideration - Title 40
Code of Federal Regulations, Chapter I,
Part 205 Transport Equipment, Noise
Emission Controls, Medium and Heavy Trucks

General Motors Corporation hereby petitions the United States Environmental Protection Agency (EPA) to delay the effective date of the 80 dB noise standard for medium and heavy trucks (40CFR, Part 205) so that it is coincident with the effective date (post-1986) of new heavy duty engine exhaust emissions standards.

Early in 1981, because of the downturn in the economic condition of the truck manufacturing industry and an unforeseen increase in the demand for medium diesel trucks which are the most costly to quiet, the EPA Office of Noise Abatement and Control granted a one year deferral, to January 1, 1983, of the effective date of the medium and heavy truck 80 dB passby noise standard. The Agency stated that the purpose of this action was to provide temporary relief from expenditures that would have been needed to bring these trucks into compliance with the 80 dB standard as of January 1, 1982.

With the recession deepening, an additional three year delay of the 80 dB noise standard was granted by EPA, with the following explanation:

"In consideration of the present economic state of the truck industry and the potential interrelationship of design changes that may be required to meet the 80 dB standard with technological innovations now being considered to

reduce exhaust emissions and improve fuel economy, the Administrator has concluded that an additional three-year deferral of the 80 dB standard for medium and heavy trucks to 1986 is appropriate. Thus, the purpose of this deferral is twofold: First to provide near-term economic relief to the truck industry by allowing them to temporarily divert those resources that would otherwise be used to comply with the 1983 80 dB standard to help meet their near-term economic recovery needs, and second, to permit manufacturers to align and economize the design requirements attendant to the 80 dB standard with improved fuel economy designs and Federal air emissions standards anticipated in the 1986 timeframe." (47 FR 7186, February 17, 1982.)

Despite encouraging reports of the effects of economic recovery on sales of passenger cars and light trucks, the medium and heavy truck segment of the automotive industry continues to suffer from sales conditions which prevailed during the recession. For this reason, General Motors contends that the circumstances that existed in 1981, when EPA granted the two postponements, are just as prevalent today as they were at that time.

Domestic truck sales for 1982 were only 47 percent of sales in the 1979 peak sales year. For the 1983 model year, through August 1983, sales of GM trucks over 10,000 pounds are at 39 percent of sales in the 1979 peak sales year for the same period. Thus, the economic status of the medium and heavy truck industry is still seriously depressed.

Even though present economic indicators suggest that the effects of the recession have turned the corner for the passenger car and light truck segment of the industry and that the nation is on its way to recovery, it should be noted that the truck manufacturing industry historically trails other segments of the economy in recovery by at least six months to a year. Present industry projections suggest only a modest improvement in sales in 1984 with a possible return to pre-recession production by 1985 or 1986. Thus, significant improvement in the truck manufacturing industry's cash flow is not expected to occur for some time to come.

Development and release of vehicle designs that comply with the 80 dB standard require a significant expenditure of resources. General Motors Truck and Bus Group alone committed over two calendar years of effort and expended \$4.5 million for the original 1982 releases to comply with the 80 dB standard (prior to its postponement). Most of this expenditure will not be recoverable because market forces have dictated changes in product offerings since then.

We are submitting this petition at this time because the two-and-one-half to three year lead time, required for the orderly implementation of vehicle noise control designs to meet a 1986 production schedule, necessitates the immediate commitment of still scarce resources, money and personnel, to design and development testing. Thus, we have established programs and are presently beginning to expend funds to develop noise control measures to enable new GM trucks to meet the 80 dB standard in 1986.

In the interest of averting repeat noise development programs (a program for current engine designs and a second program two years hence for engines designed to meet new diesel particulate and more stringent NOx standards), and to permit the industry to coordinate design programs for noise and emission control requirements, General Motors recommends establishing the effective date for the 80 dB noise standard to coincide with the implementation date for these future heavy duty engine exhaust emission controls.

It is our understanding that the EPA is currently preparing proposed rules for the new heavy duty engine emission standards to become effective some time after 1986. It is particularly important that the effective date for the 80 dB noise standard be likewise delayed to be coincident with the emissions requirements because the noise characteristics of new vehicles will be dependent on the hardware necessary to meet exhaust emissions standards.

In evaluating this petition, the EPA is asked to consider the fact that truck-related environmental noise has been significantly reduced since 1978 when the 83 dB standard became effective. Furthermore, truck-generated environmental noise continues to decrease in severity as older, noisier trucks are replaced by newer models designed to meet an 83 dB standard and as noisier bias-ply tires are replaced by quieter radial tires. Thus, it is General Motors belief that a two or three year delay in the effective date of the 80 dB standard would have an insignificant adverse impact, if any, on environmental noise levels.

In summary, General Motors requests that the EPA defer the effective date of the 80 dB truck noise standard to coincide with the effective date of the new heavy duty engine NOx and diesel particulate exhaust emissions standards. This action will result in badly needed economic relief for the truck manufacturing and trucking industries, primarily due to a singular noise reduction design effort coordinated with emission-related design programs, with minimal environmental noise impact.

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If we can be of assistance to you or your staff in answering any questions regarding this petition, please do not hesitate to call Mr. P. P. Pataky on (313) 575-1626, or Mr. E. R. Pezon on (313) 575-2008.

Very truly yours,

John C. ...



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Helen O. Petruskas
Vice President
Environmental and Safety Engineering

Ford Motor Company
The American Road
P. O. Box 1899
Dearborn, Michigan 48121-1899

December 15, 1983

The Honorable William D. Ruckelshaus
Administrator
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Ruckelshaus:

Enclosed is a petition from Ford Motor Company (Ford) requesting deferral of the January 1, 1986, effective date of the 80 dB(A) noise emission standard for medium and heavy trucks [40 CFR 205.52(a)(11)] so as to make it coincident with the effective date of the more stringent NO_x and particulate standards that may apply to the 1987 or 1988 models. According to EPA pronouncement, these exhaust emission standards are to be proposed early in the 1984 calendar year.

Our reasons for this request include the continued depressed state of the medium and heavy truck industry, the increased burden of the cost of compliance and the fact that anticipated standards mandating reductions in NO_x emissions from heavy duty engines and regulating particulate emissions from such engines no longer are projected to take effect on January 1, 1986.

As the Agency previously recognized, engine modifications needed to comply with these anticipated standards also are likely to affect the level of noise emissions from these heavy truck engines. The decline in demand for heavy trucks coupled with the increased penetration of imports has severely reduced our available product development income. The Agency should defer the effective date of the 80 dB(A) standard to coincide with that of the NO_x and particulates standards, to spare Ford (and doubtless other manufacturers) from having to divert scarce engineering personnel, and having to incur substantial additional costs that the consumer may have to absorb because Ford would be required to first engineer regulated trucks (including in some cases their engines) to comply with the 80 dB(A) standard by January 1, 1986, and to later re-engineer those same trucks to comply with the same 80 dB(A) standard after the engines have been modified to comply with the anticipated NO_x and particulates standards.

William D. Ruckelshaus

- 2 -

December 15, 1983

We are submitting this petition at this time because the orderly development of vehicle noise abatement designs to meet a 1986 production schedule requires the immediate allocation of both engineering resources and tooling money. In addition, to avoid repetitious testing, our engineering practice dictates that we use production level (emissions calibrated) engines for our noise control development. We urge you to give favorable and expeditious consideration to this petition.

If you or your staff would like to discuss any aspect of this petition further, please contact me or Mr. Donald R. Buist, Director, Automotive Emissions and Fuel Economy Office at (313)594-0842.

Sincerely,

H. O. Petrus
H. O. Petruskas

Enclosure

PETITION OF FORD MOTOR COMPANY
FOR AMENDMENT OF EFFECTIVE DATE OF LOW SPEED SOUND EMISSION
STANDARD FOR MEDIUM AND HEAVY TRUCKS -

40 C.F.R. §205.52(a)(11)

Ford Motor Company (Ford) petitions the U.S. Environmental Protection Agency (EPA) to defer the effective date of the 80 dB(A) noise emission standard (40 C.F.R. §205.52(a)(11)) so that it becomes coincident with the effective date of the heavy duty engine NO_x and particulate exhaust emission standards* which currently are expected to be promulgated by EPA for the 1987/1988 time period.

I. INTRODUCTION AND SUMMARY

Ford is submitting this petition at this time because lead time considerations for the orderly development of vehicle noise abatement designs to meet a 1986 production schedule requires the immediate allocation of both engineering resources and tooling money, both of which are in short supply.

The heavy truck industry, both manufacturers and users (the motor carriers), continues in the worst depression it has experienced since World War II. U.S. factory sales are running at a rate of only 40% of the recent 1974 peak. These reduced sales increase the impact of Ford's cost of compliance in three ways. First, we have a smaller base over which to allocate our fixed costs (engineering, tooling, facilities and launch expenses). Second, income necessary to finance the development of noise abatement hardware must be diverted from other sources and product programs. Third, price increases necessary to cover the additional hardware costs will further discourage truck purchases.

There is, however, a positive side to reduced sales. In assessing the need for the noise standards EPA assumed continued growth in the number of new trucks sold and total trucks in operation. Because the number of noise generating sources have increased much more slowly than projected by EPA, a deferral of the 80 dB(A) noise standard will not significantly affect the public.

In 1982, the Administrator deferred to January 1, 1986 the 80 dB(A) noise standard. The purpose of the deferral was twofold: First, to provide near-term economic relief and second, to permit manufacturers to align and economize the design requirements of the 80dB(A) noise standard with improved fuel economy designs and Federal air emission standards anticipated in the 1986 timeframe. The pertinent rulemaking notices associated with the more stringent air emissions standards are now anticipated to be issued in early 1984. Lead time constraints could dictate the final rules be effective in the 1987 or 1988 timeframe. Consequently Ford is requesting that the effective date of the 80 dB(A) noise standard be deferred to be coincident with the forthcoming emission standards.

* These are the standards referred to in 48 Fed. Reg. 47864, 47916 (October 17, 1983) at Sequence Numbers 242 and 243.

II. Depressed State of the Medium and Heavy Truck Industry

The heavy truck industry continues in the worst depression it has experienced since World War II. U.S. factory sales have declined from the recent peak in 1974 of 450,000 to 184,000 in 1982 (Attachment A). The industry sales rate for the first seven months of this year supports Ford's projection of less than 180,000 sales for the full 1983 calendar year (a 60% reduction from 1974 levels).

The motor carrier industry has just suffered its worst financial results in history, with over 43 percent of ICC-regulated carriers showing an operating loss in 1982. In addition, over 300 major carriers have gone out of business altogether, are in Chapter II bankruptcy, or have reduced or altered service since July of 1980 (See American Trucking Association, Inc., publication entitled "What Is The Industry's Financial Condition?", Attachment B).

In addition to the decline of the total demand for heavy trucks, the threat of the imports has never been so great. Three major heavy truck manufacturers have been acquired by foreign manufacturers in the past two years--Freightliner, White and Mack. Imports have continued to capture an ever-increasing share of the market despite declining volumes in U.S. retail deliveries of medium-heavy (Group 4-7) trucks. As indicated in Attachment C, U.S. retail deliveries of Group 4-7 medium-heavy trucks have declined from 291,000 units in 1973 to 104,000 units projected for 1983--a 65% reduction. In the same period, import share has steadily grown from 0.1% in 1973 to a projected 7.6% of the medium-heavy market projected for 1983 (Attachment D). In the near term we expect import sales to continue to increase.

The results of this decline in total demand and in the market share of domestic manufacturers have been reductions in the domestic work force and "belt tightening" to reduce fixed costs. At Ford this has translated into a 27% reduction of heavy truck engineering manpower since 1978. Industry production facilities are presently operating at 40% of their potential normal output. On August 4, 1980 production at Ford's heavy truck plant in Louisville, Kentucky was reduced from two shifts, producing 28 units per hour, to one shift, producing 23 units per hour--a 60% reduction.

The most dangerous threat facing the U.S. heavy truck manufacturers today is the incursion of the imports. With the limited engineering resources available, new product programs need to be implemented to assure a viable U.S. heavy truck industry. This nation's experience with imports in the passenger car and light truck markets should serve as examples of what can happen if the U.S. heavy truck industry is not adequately prepared with products demanded by the marketplace. Consequently, whenever possible, programs should be planned to assure maximum utilization of the limited engineering resources.

If the EPA were to defer the 80 dB(A) noise regulation to become effective concurrently with NO_x reduction and diesel particulate requirements, then a common vehicle/engine product change program for the 1987/88 timeframe could be engineered and managed in a most effective manner. Otherwise, engine and vehicle changes required to comply with the current January 1, 1986 effective date for the 80 dB(A) standard may have to be followed by still more engineering and testing to enable compliance with 1987/88 requirements.

III. EFFECT OF OTHER FEDERAL STANDARDS

EPA conducted a public hearing in July, 1982 to receive comments on the feasibility and impacts of standards which it had proposed for the control of NO_x emissions from all (gasoline and diesel) heavy-duty engines and particulate emissions from heavy-duty diesel engines. The proposed effective date of the standards was the 1986 model year (MY). The comment period ended on September 13, 1982.

Throughout the remainder of 1982 and most of 1983, EPA and manufacturers devoted their heavy truck regulatory efforts to resolving the 1985 and subsequent model year heavy-duty engine HC and CO standards, test procedures, and useful life provisions.

With these issues now resolved (48 Fed.Reg. 52170, November 16, 1983), we anticipate that EPA will resume its work on the NO_x and particulate standards. EPA has stated that it will publish the pertinent NPRMs in early 1984. (See 48 Fed. Reg. 47864, 47916 (October 17, 1983) at Sequences Nos. 242 and 243). Based on past experience, this publication would be followed by a comment period ending in mid-1984 and the issuance of final rules by the end of 1984 (at the earliest). At that time, the start of engine production for the 1986 and 1987 model years, will be just eight and twenty months away, respectively. Thus the originally proposed 1986 effective date (to which the effective date of the 80dB(A) noise standard was pegged) is no longer practicable, and the practicability of the 1987 model year is in considerable doubt.

In order to compete in the heavy-duty truck market, Ford (and presumably other truck manufacturers) must offer a wide variety of engines to suit the needs of its customers in terms of overall function, fuel economy, durability, and price. As a result, Ford, as a full line truck manufacturer, must design its trucks to meet all specifications (regulatory and product acceptance) with a number of different engine configurations. Diesel engines in particular pose significant difficulty in drive-by noise compliance. Noise generated within the engine is a significant contributor to the total vehicle noise in the case of diesel engines, which, because of their rapid pressure rise during the combustion process, generally emit more noise than gasoline engines.

Ford currently offers diesel engines from four suppliers (Caterpillar, Cummins, Detroit Diesel Allison (DDA), and International Harvester) in its trucks above 10,000 pounds GVW. Beginning in the 1986 model year, Ford also will offer mid-range diesel engines designed and manufactured by Ford (Tractor Operations). Due to this engine design and supplier diversity, a very detailed coordination effort is required between Ford and each of its engine suppliers to assure compliance with the noise standard in every configuration. If the effective date of the 80dB(A) noise standard remains at January 1, 1986, two major coordinated design programs will be required. The first program will have to assure that 1986 model year trucks with "interim level" engines meet the 80dB(A) standard. These "interim level" engines will be a combination of carry-over engines and engines with improved fuel economy aimed at increasing sales. The second major effort will involve meeting the noise standard while integrating a new generation of engines designed to meet new NO_x and particulate standards in the 1987 or 1988 model year.

Ford has surveyed its engine suppliers; these state unanimously that compliance with the more stringent NO_x and particulate standards will affect the noise levels of their engines. It appears, however, that the effect will vary--both directionally and in magnitude--from manufacturer to manufacturer and by engine configuration. This will make the task for the truck manufacturer (Ford) extremely complex as it tries to accommodate, on a given truck model, engines which emit more or less noise, than in the previous model year. Compliance with the 80dB(A) noise standard in conjunction with the more stringent emission standards will entail a difficult and expensive program regardless of whether the effective date of the 80dB(A) noise standard is deferred to coincide with that of the new emission standards. The reduced burden resulting from such a deferral would be derived from not having to reduce the noise levels of the interim level engines (either through engine or truck design changes).

The following is a discussion of the various strategies that Ford's engine suppliers are considering as means of complying with the post-1986 (as-yet-to-be-determined) emission standards while minimizing fuel consumption penalties. The directional impacts of these changes on engine noise are also discussed.

Turbocharging

Some engines will be converted from naturally aspirated to turbo-charged. Turbocharging can be used effectively to reduce fuel consumption and particulate emissions at an equivalent performance (power) level. It also tends to increase NO_x emissions, which must be offset by some other strategy. Turbocharging tends to reduce engine noise throughout the speed range by increasing the charge air temperature, which increases the end-of-compression temperature and results in a shorter ignition delay. Less fuel is injected into the cylinder during a shorter ignition delay and the spontaneous combustion of this smaller amount of fuel causes a lower initial pressure rise rate, which results in a reduction in noise.

Charge Air Cooling

Charge air cooling is expected to become widely used with the implementation of the revised emission standards. Cooling the charge air after it leaves the turbocharger tends to offset the adverse effect of turbocharging on NO_x . Alternatively, when applied in conjunction with injection timing changes (advance), it can reduce fuel consumption at a given NO_x level. Thus it provides a means of optimizing emissions and fuel economy. Various manufacturers are pursuing the following methods of charge air cooling, listed in order of temperature reduction capability (from lowest to highest):

- . Jacket water intercooling
- . Low temperature (water) intercooling
- . Air-to-air intercooling

Unfortunately, the complexity, expense, and packaging difficulty generally increase in correspondence with the relative effectiveness of the three types of systems.

Charge air cooling generally tends to increase engine noise by increasing ignition delay (the opposite of the effect of turbocharging) which results in steeper initial pressure rise rates. In addition, depending on the configuration and location of the intercooler, it may adversely affect engine cooling (either by adding heat to the coolant or restricting the flow of cooling air from the fan to the radiator. In this case, a larger, deeper-pitched, fan or higher-speed fan may be required, which would tend to increase noise.

Injection Timing

Injection timing retard is very effective at reducing NO_x levels. However, the significant tradeoff with particulates and fuel consumption make it necessary to combine it with other strategies to meet emission standards while maintaining competitive fuel economy. Because of its effect of reducing peak combustion pressure, timing retard generally is expected to reduce engine noise.

Exhaust Gas Recirculation

There has been a general reluctance among heavy-duty diesel engine manufacturers to use EGR to control NO_x due to the potential adverse effects on particulate emissions, lubricant breakdown, and engine durability, and its limited effectiveness at reducing NO_x under conditions close to full load due its tendency to cause excessive smoke. Nevertheless, EGR may see at least limited use in California and possibly in 49 states depending on the NO_x standard and its effective date. Like retarded injection timing, EGR is expected to reduce engine noise through its effect on peak combustion pressure.

Combustion Chamber Improvements

All of Ford's diesel engine suppliers have identified combustion chamber modification as an area they are working on to achieve reductions in emissions and improved engine performance. However, these changes are in early stages of development and have not been tested to determine noise impacts.

Speed Reductions

Ford's suppliers are considering reductions in rated speed over the next several years, primarily as a means of reducing fuel consumption, and offsetting the fuel penalty of reduced NO_x . Speed reduction generally will reduce engine noise; however, this action may require upgrading of driveline components in order to not adversely affect durability.

Electronic Controls

Some heavy-duty diesel engines are likely to employ electronic control of fuel injection to meet the post-1986 reduced NO_x and particulate standards. The opinions of Ford's suppliers are mixed as to the directional effect of electronics on engine noise. If the net effect of electronic control is to provide more overall advance in injection timing than the mechanical system it replaces, then combustion noise may tend to increase. Likewise, if improved fuel control during acceleration allows higher transient fuel rates, transient engine noise may be increased. On the other hand, if noise objectives are integrated into the calibration of the control module, electronic control may provide the capability for scheduling injection timing to reduce noise at critical operating conditions and to rapidly change timing during transients to reduce acceleration noise.

Particulate Trap-Oxidizer Systems

Although EPA had originally proposed a "trap-forcing" particulate standard for heavy-duty diesel engines beginning in the 1986 model year, we now believe the Agency will propose a particulate standard that can be met on an "engine-out" basis, because trap-oxidizer systems are not feasible for heavy-duty engines in the 1987/88 time frame. If and when these systems come into use, they may tend to reduce exhaust noise when they are in a collection mode. Noise levels during regeneration have not been assessed and would depend on the mechanism used for regeneration.

Based on the above, the net effect on noise of the changes made to engines in order to meet the revised emission standards will differ from engine model to engine model. We expect that some engines will tend to emit less noise than their predecessors, while others will emit more. The latter engines will require additional noise abatement features such as cylinder block side covers, isolated oil pans, etc., or additional vehicle shielding. A deferral of the effective date of the 80dB(A) standard to coincide with the revised emission standards would save Ford and its customers significant costs in either case. In the case of an engine

where revised emission control will reduce noise, the deferral will result in savings of noise abatement equipment and design costs in both the near term and the longer term by permitting the beneficial impact of the emission-related changes to be integrated with the design of the vehicle. In the case of an engine where the emission-related changes will have a net adverse effect on engine noise, the deferral of the noise standard would result mainly in near-term savings by enabling engine and truck manufacturers to forego the design and installation of additional noise reduction equipment on (and around) the "interim level" engine. This would free up resources to concentrate on reducing the noise level of the post-1986 low-emission engine.

V. PUBLIC INTEREST CONSIDERATIONS

Ford believes that the public will not be harmed by deferral of the 80 dB(A) standard. An EPA analysis (detailed below) shows that truck noise passby levels would drop by only 1.2 dB(A) in going from the 83 dB(A) standard to the 80 dB(A) standard. The following table, taken from EPA background document 550/9-76-008, shows the minimal incremental benefit which would be gained by enforcement of the 80 dB(A) standard.

Percentile Noise Levels for Individual Truck Passbys
(Ref: Page 4-37, Table 4-20)

<u>Truck Type</u>	<u>Percentile Passby Noise Levels</u>			
	<u>L50</u>	<u>L10</u>	<u>L1</u>	<u>L0.1</u>
Existing Trucks	83.5 dBA	88.2 dBA	91.8 dBA	94.9 dBA
83 dB(A) Regulated Trucks	77.2 dBA	79.1 dBA	80.5 dBA	81.8 dBA
80 dB(A) Regulated Trucks	76.0 dBA	77.9 dBA	79.3 dBA	80.6 dBA

It should be noted that going from the unregulated environment to 83 dB(A) regulated trucks dropped the L10, L1, and L0.1 (10%, 1%, and 0.1% percentile trucks) noise levels 9.1 dB(A), 11.3 dB(A), and 13.1 dB(A) respectively. Additional regulation to 80 dB(A) drops each of the L10, L1, L0.1 levels only an additional 1.2 dB(A).

In setting the standards, EPA assumed continual growth in the number of new trucks sold and in the number of total trucks in operation. Modeling projections in the original rulemaking background document used a growth rate which ranged from 1.5% for medium trucks to 5.0% for heavy diesels. More recent studies (National Exposure to Highway Noise Through the Year 2000, Wyle Research July 1979) used an average growth rate of 2.4%. Although showing a continual decline in the overall market, EPA's market projections (published as Figures A-5, A-6 and A-7, 46 Fed. Reg. 8510-8512, January 27, 1981) in the first deferral of effective dates were still more optimistic than the present trend.

Attachment E is a summary of the most recent Automobile Manufacturers Research Council compilation of manufacturer and supplier forecasts of the U.S. domestic industry sales of heavy trucks in 1983 through 1985 calendar years. Truck manufacturers are more "bullish" in their forecast of an industry recovery than are suppliers and Ford is the most optimistic. U.S. domestic industry sales through August 1983 are running at a seasonally adjusted rate of 186,000 units which is slightly more than the average of the truck manufacturers forecast of 180,000 and right on Ford's 185,000 projection. Industry forecasts beyond 1985 are not available. Ford's projection beyond 1985 indicates a small increase of about 0.6% in each of calendar years 1986, 1987 and 1988.

Consequently, the magnitude and conditions of use of medium and heavy trucks are likely to not achieve the levels projected by EPA in their benefit analysis until a much later time.

V. COST OF COMPLIANCE

The cost of compliance impacts both truck manufacturers and the truck users. The manufacturer must allocate engineering manpower and development budget which could better be utilized on more functional product programs as well as absorb the lost sales and profit potential associated with price increases necessary to recover the added cost of the noise abatement hardware. The truck user must contend with higher initial cost as well as continuing higher maintenance costs imposed as a result of the installation of sound barriers. Ford does not have any new estimates of incremental maintenance costs which have not already been supplied to the Agency in responses to Docket 81-02 (particularly the Motor Vehicle Manufacturers Association of the United States (MVMA) response, Document 81-02-25 dated 4-22-81 and incorporated herein by reference).

Ford's estimates of the incremental cost impact of implementing the 80 dB(A) standard compared to the 83 dB(A) standard are shown below in terms of the cost penalty per truck.

<u>Truck Category</u>	<u>Cost per Truck (Retail Price Equivalent) 1986 (Dollars)</u>
Gasoline	\$ 135
Mid-Range Diesel	\$ 416
Premium Diesel	\$1100
Average Heavy Truck	\$ 416

These estimates are somewhat lower than those provided to EPA in our response to Docket 81-02 on April 24, 1981 due to the following revisions:

Gas Engine - Some of the major cooling and exhaust system revisions are currently assumed not to be required.

Mid-Range Diesel - The naturally aspirated Caterpillar 3208 engine will continue to be available and the cooling system will not require revisions. In addition, double wall exhaust pipes have been incorporated into current production, and therefore the cost increase for such incorporation no longer appears in our estimate.

Premium Diesel - Variable costs reflect current quotes. Intake system revisions will not be required. The transmission modifications to reduce gear noise and the improvements in exhaust system mounting have been incorporated into current vehicles, and therefore the cost increases for these changes do not appear in our estimate.

Additionally, the investment required to implement the 80 dB(A) hardware changes is approximately \$10 million (1983 dollars). This investment does not include \$1.4 million which represents the net additional engineering expense that would be incurred to redo the 80 dB(A) noise program in conjunction with the 1987/88 diesel emissions program.

VI. STATUTORY AUTHORITY

The Noise Control Act requires that the Administrator set noise emission standards "...requisite to protect the public health and welfare taking into account the magnitude and conditions of use of such product (alone or in combination with other noise sources), the degree of noise reduction achievable through the application of the best available technology, and the cost of compliance." The Administrator is also required to give appropriate consideration to standards under other laws designed to safeguard the health and welfare of persons, including pertinently any standards under the Clean Air Act. 42 U.S.C. §4905(e)(1). The Administrator is authorized to revise any regulation containing such a standard. 42 U.S.C. §4905(e)(3).

In 1982, the Administrator granted under this statutory authority a three year deferral to January 1, 1986 of the 80 dB(A) noise standard. In doing so, the Administrator stated in pertinent part:

"In consideration of the present economic state of the truck industry and the potential interrelationship of design changes that may be required to meet the 80 dB standard with technological innovations now being considered to reduce exhaust emissions and improve fuel economy, the Administrator has concluded that an additional three-year deferral of the 80 dB standard for medium and heavy trucks to 1986 is appropriate. Thus, the purpose of this deferral is twofold: First, to provide near-term economic relief to the truck industry by allowing them to temporarily divert those resources that would otherwise be used to comply with the 1983 80 dB standard to help meet their near-term economic recovery needs, and second, to permit manufacturers to align and economize the design requirements attendant to the 80 dB standard with improved fuel economy designs and Federal air emission standards anticipated in the 1986 timeframe. (47 Fed. Reg. 7186 (February 17, 1982)).

In view of the increasingly depressed economic conditions of the medium and heavy truck industry and the anticipated changes to heavy-duty exhaust emissions standards, Ford believes an additional delay in the effective date of the 80 dB(A) standard is warranted at this time.

VII. CONCLUSION

Ford submits that the foregoing facts and reasons demonstrate conclusively that the effective date of the 80 dB(A) standard ought to be deferred to coincide with the effective date of the forthcoming heavy truck NO_x and particulate emission standards. Such action is therefore respectfully requested. We also respectfully request expeditious action on this petition. As shown in Attachment F, unless the current effective date of January 1, 1986 is promptly deferred, we shall have to allocate engineering resources and tooling money in order to meet that date, regardless of the ultimate ruling on our petition.

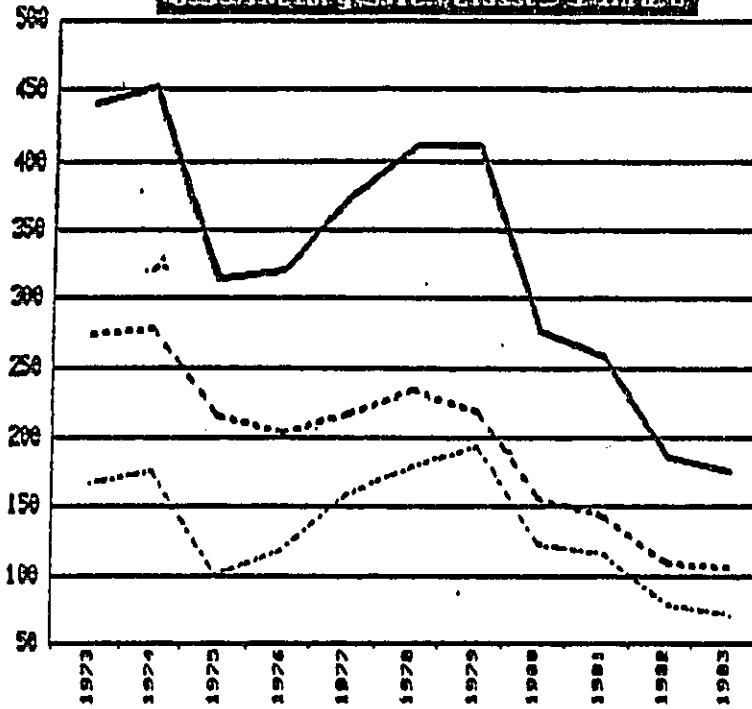
4/310/3

9/6/83

US FACTORY SALES

H.T. INDUSTRY VOLUME

(U.S. Factory Sales - 1973-1983)



LEGEND:
US TOTAL SALES
MED. HUY. (4-7)
EXT. HUY. (8)

NOTES:
1. SOURCE: IVFA FACTS AND FIGURES '83 (Page 12)

What is the industry's financial condition?

• CONTINUED FINANCIAL AND BUSINESS DECLINES FOR ICC REGULATED MOTOR CARRIERS OF PROPERTY IN 1982 PRODUCE WORST YEAR IN HISTORY

The motor carrier industry in 1982 suffered its worst financial results in history, seeing its composite operating ratio (operating expenses as a percent of gross revenues) rise to 98.29 and its income after tax margin fall to one-half of one percent (50 cents per \$100.00 of revenues). The 1982 results reflect a trend in deteriorated earnings and financial health that has been unending since 1977, and the present dismal results eclipse those of 1960, the previous low point in industry earnings.

With declines experienced in all quarters of 1982 from the comparable quarters of 1981, the 1982 results show a significantly deteriorated industry position. Based on 497 Class I and II carrier submissions to the ICC, tonnage of 262.83 million in 1982 was off 10.79 percent from 328.30 million tons in 1981. Vehicle miles declined 7.17 percent to 9.19 billion from 9.90 billion miles.

Revenues for the 497 carriers totalled \$19.34 billion, a decline of 5.76 percent from \$20.52 billion in 1981. Expenses declined to \$19.01 billion from \$19.78 billion. Since the expense decline of 3.88 percent was less than the revenue slippage, net carrier operating income fell -- to \$329.84 million from \$745.64 million, or by 55.76 percent. Ordinary income before taxes fell by 64.84 percent to \$227.11 million from \$646.22 million. With income taxes taking over 57 percent of these earnings, ordinary income after taxes was \$97.56 million in 1982, 75 percent lower than the 1981 earnings of \$393.83 million. The full year

(over)

1982 operating ratio was 98.29, compared to 96.37 in 1981, and the profit margin was 0.50 percent (50 cents for every \$100.00 of revenues) compared to 1.92 percent in 1981.

For the year as a whole, 40 percent of the individual carriers had operating ratios of 100 or above, indicating operating losses. Based on final net, almost 43 percent of the carriers ended 1982 with a net loss. In the fourth quarter of 1982 specifically, 59 percent of all carriers experienced losses in operating their trucking business. This is in addition to the 300 major carriers (employing 55,800) which have gone out of business altogether, are in Chapter 11 bankruptcy or have reduced or altered service since July of 1980.

Of the top 100 carriers by revenue, 43 had net losses in 1982. The profit margin of these firms was 0.42 percent and their return on equity was 2.19 percent in 1982 compared to 11.10 percent in 1981.

April 1983

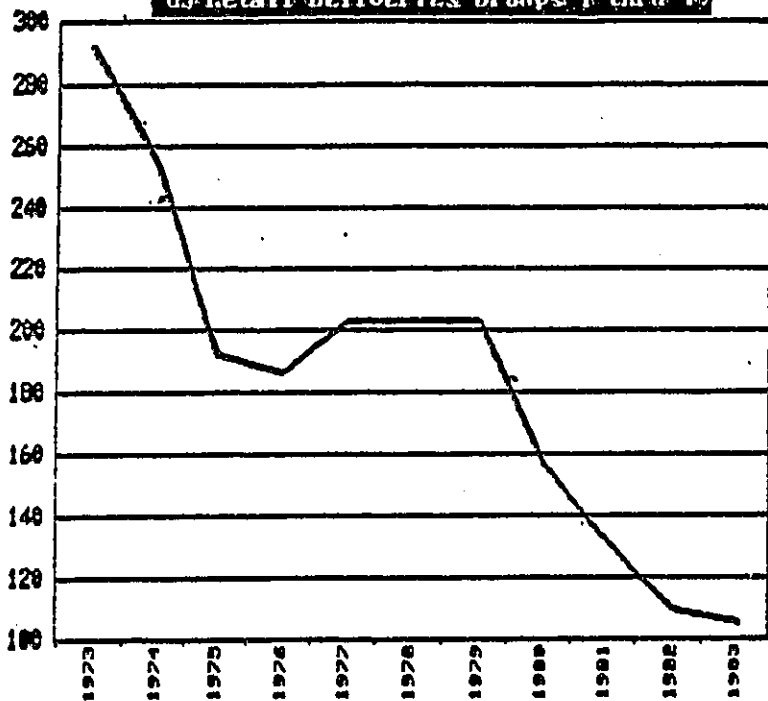
American Trucking Associations, Inc.

9/6/83

MED-HVY TRK IND VOL

US Retail Deliveries Groups 7 thru 7)

US MEDICAL EQUIPMENT



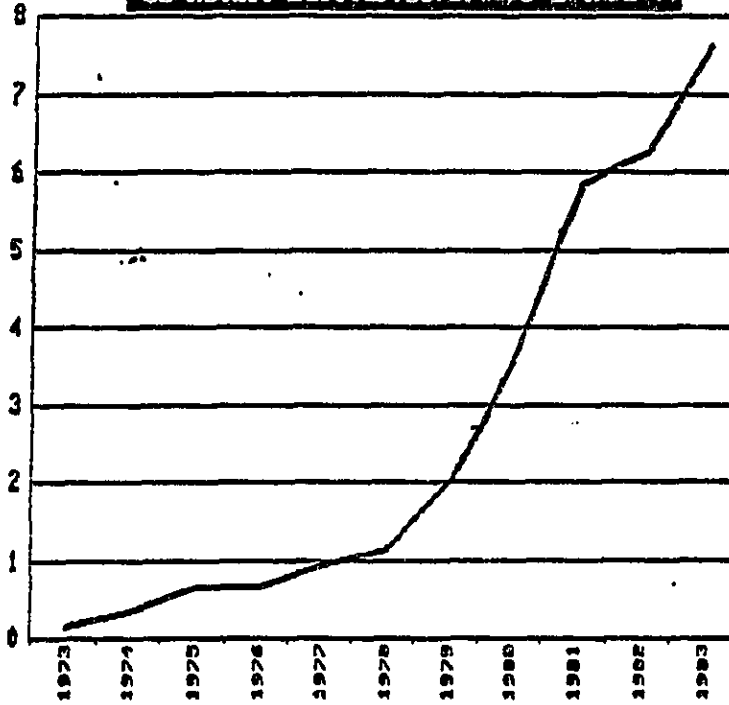
LEGEND:
TOTAL M/H SALES

NOTES:
1. The name of this file is MLSALES

9/6/83

MED HUY TRK IND VOI
US Retail Deliveries Groups 1 thru 4

US IMP. RET. DEL.
US Retail Deliveries



LEGEND:
IMP. SALES

NOTES:
1. The name of this file is
IMP_SALES

TOTAL HEAVY TRUCK INDUSTRY VOLUME FORECASTSJULY 1983U.S. Domestic Industry Sales

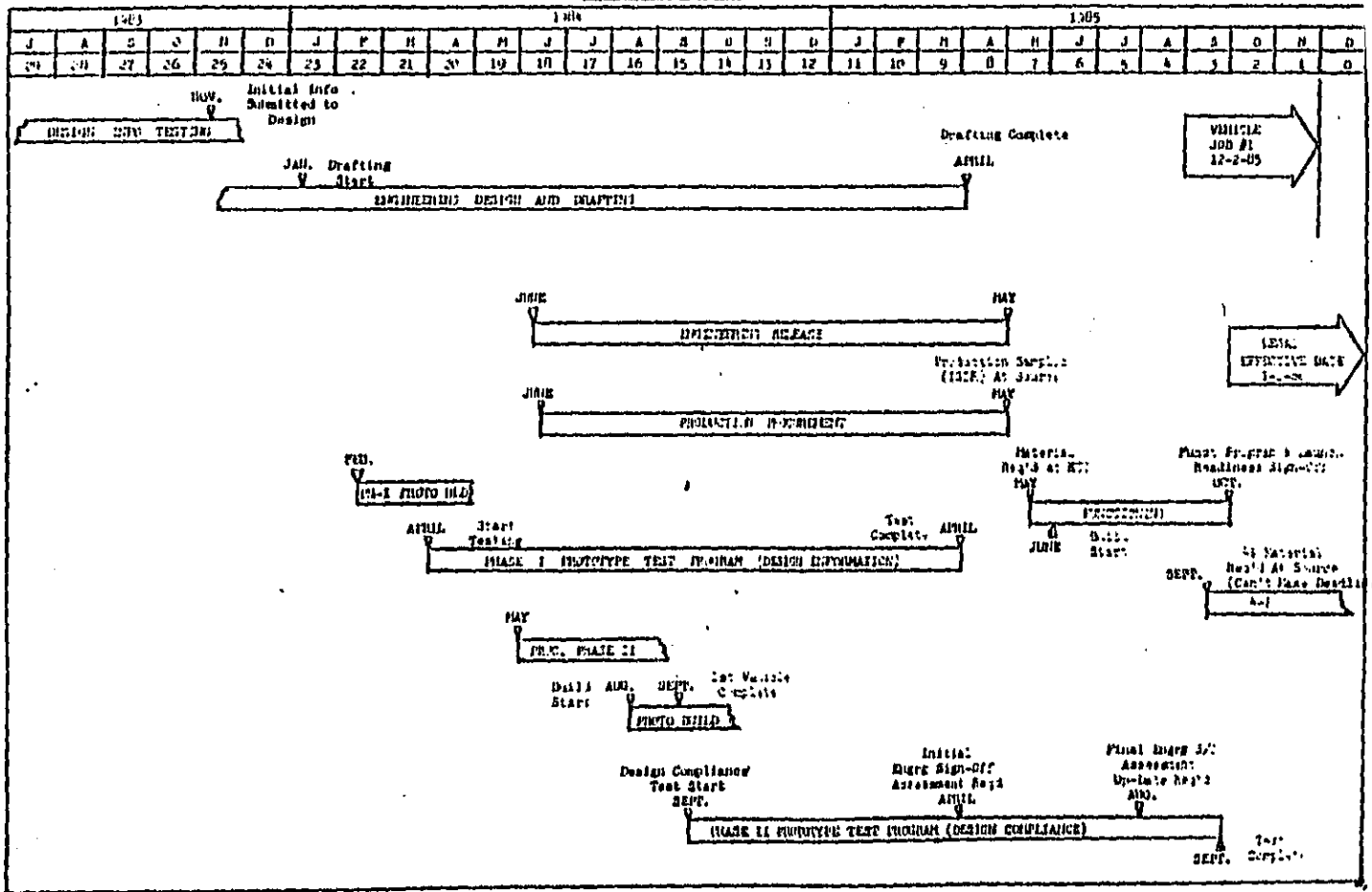
<u>Manufacturer</u>	<u>Group 5-7</u>			<u>Group 8</u>			<u>Total Heavy</u>		
	<u>Medium/Heavy</u>			<u>Extra-Heavy</u>					
	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
Ford	210.0	150.0	198.0	75.0	90.0	122.0	185.0	240.0	320.0
GMC	114.7	122.4	149.4	74.3	102.7	140.0	189.0	225.1	289.4
INR	102.3	126.1	136.4	80.8	111.6	132.4	183.1	237.7	268.8
Mack	103.2	119.1	129.3	69.7	97.9	126.3	172.9	217.0	255.6
White	95.5	115.0	133.0	71.0	105.0	125.0	166.5	220.0	258.0
Freightliner	101.0	116.0	140.0	81.0	98.0	128.0	182.0	214.0	268.0
Average	105.0	125.0	145.0	75.0	100.0	130.0	180.0	225.0	275.0
Ford Over Other Manufacturers							5.0	20.0	50.0
<u>Supplier</u>									
Bendix	96.7	101.5	106.6	77.0	96.2	110.7	173.7	197.7	217.3
Federal Mogul	96.3	124.0	137.5	71.0	80.8	101.3	167.3	204.8	238.8
Eaton	106.1	123.5	136.0	76.0	110.5	130.0	182.1	234.0	266.0
Rockwell	94.0	105.8	143.1	73.6	93.7	127.7	167.6	199.5	270.8
TRW	97.8	110.5	136.0	72.3	102.0	140.3	170.1	212.5	276.3
Clark	-	-	-	-	-	-	175.0	211.0	262.0
Caterpillar	96.9	101.7	106.8	69.0	89.3	110.5	165.9	191.0	217.3
BDA	107.5	125.7	147.2	71.0	89.8	103.9	178.5	215.5	253.1
Average	100.0	115.0	130.0	75.0	95.0	120.0	175.0	210.0	250.0

Federal Exterior Noise Program
(Legal Effective Date - January 1, 1986)

PROGRAM TIMING ELEMENTS

<u>Mos. Before Job #1</u>	<u>Calendar Date</u>	<u>Element</u>
0	Dec - 85	<u>Job #1</u> <ul style="list-style-type: none"> . First unit off production line . Staged one month ahead of legal effective date
6	Jun - 85	<u>Manufacturing Proveout</u> <ul style="list-style-type: none"> . Training unit builds . Verify process description/sequence and bills of material . Develop manufacturing aids . Test production tooling and facility revisions . Procure production supply . Determine incoming parts quality and supplier process capability
8	Apr - 85	<u>Engineering Sign-Off</u> <ul style="list-style-type: none"> . Establish compliance to legal req'ts and internal objectives . Test and develop attenuation capability of noise abatement hardware . Confirm durability/reliability of noise hardware and associated subsystems and component changes . Assure appropriate function, serviceability and heat protection for affected vehicle systems
16	Aug - 84	<u>Prototype Build</u> <ul style="list-style-type: none"> . Build engineering test units to production release design level using components produced on experimental tools
19	May - 84	<u>Prototype Procurement</u> <ul style="list-style-type: none"> . Issue procurements for prototype material and tools based on engineering detail drawings and system layouts
23	Jan - 84	<u>Drafting/Design Start</u>

LOW MEDIUM & HEAVY TRUCK
INTERMEDIATE PROGRAM



**AMERICAN
TRUCKING
ASSOCIATIONS, INC.**

1616 P Street, N.W., Washington, D.C. 20036

TECHNICAL SERVICES DIVISION
William E. Johns
Managing Director

ENGINEERING DEPARTMENT
(202) 797-5391

January 9, 1984

The Honorable William D. Ruckelshaus
Administrator
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Dear Mr. Ruckelshaus:

Subject: Petition for reconsideration - Title 40 Code of Federal Regulations, Chapter 1, Part 205 Transport Equipment, Noise Emission Controls, Medium and Heavy Trucks.

The American Trucking Associations, Inc. (ATA) herein petitions the U.S. Environmental Protection Agency to stay temporarily the implementation of the 80 decibel noise emission standard for new medium and heavy trucks, 40 C.F.R. Part 205, beyond the January 1, 1986 effective date in order that compliance with it will coincide with the effective date of the recently-combined heavy-duty engine exhaust emission standards for nitrogen oxides (NO_x) and diesel particulates. At this time, the effective date of these latter standards has not yet been announced but we understand that they will be prescribed for 1987 or later model year engines.

A temporary stay of the nature requested is not unprecedented. In a Federal Register notice, February 17, 1982, 47 Fed. Reg. 7186, the EPA rescheduled the effective date of the 80 decibel (dB) medium and heavy truck noise emission standard from January 1, 1983 to January 1, 1986. In doing so, the Agency stated:

the purpose of this deferral is twofold: First, to provide near term economic relief to the truck industry by allowing them to temporarily divert those resources that would otherwise be used to comply with the 1983 80 dB standard to help meet their near term economic recovery needs, and second, to permit manufacturers to align and economize the design requirements attendant to the 80 dB standard with improved fuel economy designs and Federal air emission standards anticipated in the 1986 time-frame.

Essentially, nothing has changed since EPA expressed the foregoing. The financial condition of the motor carrier industry remains relatively poor. This has directly impacted upon the financial conditions of truck manufacturers, moreover, due to an existing surplus of unused equipment and a well-stocked used truck market, any recovery for truck manufacturers will lag significantly behind that of the motor carriers.

Clearly a further postponement is warranted. The NO_x and diesel particulate standards are inherently related and the administrative process of joining the rulemakings has delayed both of the proposals. Arguments in support of permitting manufacturers to economize operations through the alignment of the noise regulation with these two important exhaust emission regulations have not changed. Significant alterations to the engine, and possibly vehicle configuration, will be required to meet the exhaust standards; thus, the possibility of dual compliance costs for both manufacturers and purchasers still exists if the noise and exhaust emission effective dates do not remain allied.

Further, the requested delay will not adversely impact upon ambient noise levels. The motor carrier industry is already in the process of switching from "noisy" bias ply tires to "quiet" radials. As demonstrated by the table in Appendix A, this switch is occurring rapidly.^{1/} This is important because, at highway speeds tire noise is the major contributor to overall vehicle noise levels. Near 100 percent use of radials can certainly be expected to reduce environmental noise levels on or near highways. Additionally, the need for greater fuel efficiency has necessitated the carriers' purchase of low-r.p.m. engines. Low-r.p.m. engines are generally regarded as quieter than engines running at higher revolutions. This trend is expected to continue and, when business improves, will occur at an increasing rate. Certainly these low-r.p.m. engines can be expected to help control ambient noise levels in the slower speed urban areas, where a truck's overall noise level is the direct product of engine and exhaust noise. Finally, the use of 80,000 pound gross vehicle weight trucks and double 27-foot trailers will further contribute to noise reductions. The increased weight limits enacted in the Surface Transportation Assistance Act are expected to reduce truck trips by 9.2 percent and result in operations that are 20 percent more efficient. Because trucks contribute to overall environmental noise, these productivity gains will directly contribute to the reduction in noise levels on and around roadways.

ATA is convinced that the cost savings and operating efficiencies to be gained by manufacturers and purchasers from the coordination of effective dates outweighs a short delay in the admittedly small incremental benefits to be gained by the 80 dB regulations in its early years. Also, the above outlined industry practices will prevent any adverse impact from the additional delay.

^{1/} Appendix A represents the results of an ATA survey on radial tire use. It can be seen that for class 7 and 8 trucks, primarily highway vehicles, radial use is above 90 percent and will approach 100 percent in the near future.

In summary, a further short delay in the effective date of the 80 dB noise standard is essential to the economic stability of the truck industry and to ensure an orderly and efficient alignment of the revised noise and emissions standards with our industry and nation's fuel economy goals. ATA respectfully requests affirmative action on this petition. If I can be of assistance to you or your staff in answering any questions regarding the petition, please do not hesitate to call. Thank you.

Sincerely,

James R. Barr

J. R. Barr
Environmental Specialist

JRB:kc

FLEET RADIAL USE

FLEET	TOTAL NUMBER OF TRUCKS		TOTAL NOW ON RADIAL		TOTAL RADIAL POTENTIAL*	
	x Class 7 & 8	y Other	x Class 7 & 8 (%)	y Other (%)	x Class 7 & 8 (%)	y Other (%)
A	13,900	9,900	13,900 (100)	5,940 (60)	13,900 (100)	5,940 (60)
B	7,000	1,000	7,000 (100)	600 (60)	7,000 (100)	600 (60)
C	7,377	1,145	7,377 (100)	1,145 (100)	7,377 (100)	1,145 (100)
D	1,200	--	180 (15)	---	1,200 (100)	---
E	6,396	--	5,437 (85)	---	6,396 (100)	---
F	325	--	163 (50)	---	163 (50)	---
G	850	--	595 (70)	---	850 (100)	---
H	933	46	933 (100)	46 (100)	933 (100)	46 (100)
I	682	36	409 (60)	36 (100)	682 (100)	36 (100)
J	1,797	147	1,797 (100)	147 (100)	1,797 (100)	147 (100)
K	725	--	653 (90)	---	725 (100)	---
L (Y)	5,350	35,354	5,350 (100)	35,354 (100)	5,350 (100)	35,354 (100)
M	4	--	1 (25)	---	4 (100)	---
N	5,266	--	5,266 (100)	---	5,266 (100)	---
O	300	--	10 (3)	---	300 (100)	---
X = 15	52,105		49,071 (94)		51,943 (99+)	
Y = 6		12,274		7,914 (65)		7,914 (65)
Y + Y' = 7		47,628		43,268 (91)		43,268 (91)

* Results from question, "Do you plan to go to 100 percent radial?"

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
New York State—TSP—Continued				
Expressway, north of the Southern Parkway, north of Conduit Blvd., north of Linden Blvd., north of Calton Ave., north of the Ft. Hermon Parkway, and north of 37th Street.		X		
The Borough of Staten Island (south of I-278, west of Richmond Ave., and north of Arthur Kill Road as far west as Rossville Ave.).				X
Remainder of AQCR				X
New York State—CO				
Hempstead Harbor AQCR:				
The City of Buffalo (an area bounded on the north by 7th Street, on the east by Hopewell Street, on the south by the City of Lakawanna and on the west by Lake Erie).	X			
The City of Lakawanna (west of South Park Avenue)	X			
Remainder of AQCR				X
Cattaraugus-Lake Erie AQCR				X
Southern Tier West AQCR				X
Southern Tier East AQCR				X
General AQCR				X
Northern (Champlain Valley) AQCR				X
Hudson Valley AQCR				X
New Jersey-New York-Connecticut Interstate AQCR:				
The Borough of Manhattan (except between 38th and 129th Sts.)		X		
The Boroughs of Brooklyn and Queens (south of the Coneyborough Bridge and Queens Blvd., west of 44th St., west of I-278, and north of the Brooklyn Bridge).			X	
The Borough of the Bronx (south of I-49 and west of I-278).			X	
Remainder of AQCR				X

* EPA designation requires State designation.

(FR Doc. 81-2888 Filed 1-27-81; 8:41 a.m.)

BILLING CODE 5610-34-M

**40 CFR Part 205
(NH-FRL 1736-7)**

Noise Emission Standards: Medium and Heavy Trucks and Truck-Mounted Solid Waste Compactors

AGENCY: U.S. Environmental Protection Agency.

ACTION: Deferral of Effective Dates: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) hereby defers the effective date for the 1982 noise emission standard of 80 decibels (dB) for medium and heavy trucks from January 1, 1982, to January 1, 1983. This action is taken in response to petitions for reconsideration of that standard which were submitted by International Harvester Company and Mack Trucks, Incorporated. The purpose of this action is to provide temporary relief to the truck manufacturing industry from expenditures otherwise needed to bring their medium and heavy trucks into compliance with the 1982, 80 dB standard. The basis for this action is the recent downturn in the economic condition of the truck manufacturing industry and an unforeseen increase in

the demand for medium diesel trucks, which are the most costly to quiet.

Because the 76 dB noise emission standard for truck-mounted solid waste compactors is related to the 80 dB level for truck chassis, the effective date for the 76 dB compactor standard is also deferred, from July 1, 1982, to July 1, 1983.

DATES: All medium and heavy trucks manufactured after January 1, 1983, must not emit a noise level (A-weighted) in excess of 80 dB when measured as prescribed in 40 CFR Part 205, Subpart B, Noise Emission Standards for Medium and Heavy Trucks (41 FR 15538).

All truck-mounted solid waste compactors manufactured after July 1, 1983 must not emit a noise level (A-weighted) in excess of 76 dB when measured as prescribed in 40 CFR Part 205, Subpart F, Noise Emission Standards for Truck-Mounted Solid Waste Compactors (44 FR 56524).

These amendments take effect on (30 days from date of Federal Register publication). EPA will consider any comments on this action, and on whether or not a further deferral of the 80 dB standard for medium and heavy

trucks would be appropriate, which are submitted before 4:30 p.m., April 24, 1981, and will respond to any comments as appropriate.

ADDRESSES: Written comments to the docket should be mailed to: Director, Standards and Regulations Division, Attention: ONAC Docket 81-02 (Medium and Heavy Trucks), ANR-490, U.S. Environmental Protection Agency, Washington, D.C. 20460.

Copies of the International Harvester and Mack Trucks petitions can be obtained from Mr. Charles Mooney, U.S. Environmental Protection Agency, EPA Public Information Center (PM-219), Room 2194D—Waterside Mall, Washington, D.C. 20460. Copies of those documents, related correspondence, and other supporting documents are available for public inspection between the hours of 8:00 a.m. and 4:00 p.m. at the Central Docket Section of the Environmental Protection Agency, West Tower, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Dr. Timothy Barry, Project Officer, Standards and Regulations Division, (ANR-490), U.S. Environmental Protection Agency, Washington, D.C. 20460; or phone (202) 557-2710.

SUPPLEMENTARY INFORMATION:

1.0 Introduction

EPA published noise emission regulations for newly manufactured medium and heavy trucks on April 13, 1976 (41 FR 15538). Those regulations require, in part, that vehicles subject to the regulations manufactured after January 1, 1978, meet a not-to-exceed noise level of 83 dB, and that vehicles manufactured after January 1, 1982, meet a not-to-exceed noise level of 80 dB when measured in accordance with a specified test procedure.

On September 2, 1980, International Harvester (IH) submitted a petition for reconsideration of the regulation which proposed that the 1982 medium and heavy truck noise emission standard of 80 dB be withdrawn. IH promised in its initial petition to submit an analysis supporting the issues raised by their petition within 30 days, and to submit an analysis of the community noise impact of the 1982 standard within 60 days. Those documents were forwarded to the Agency on October 2, and November 16, 1980, respectively.

In these submittals, IH contended that the 1982 standard will impose an

unnecessary burden and cannot, under the present conditions, be justified under a cost-benefit analysis. In support of this position, IH argued that circumstances have changed since the publication of the regulations in 1978. Specifically, IH contended that: (1) The Agency justified the 1982 standard based on the fuel savings from quiet fans, which are now being installed solely for their fuel benefit; (2) the growth in demand for medium-duty diesels, the class of vehicle costing the most to quiet, was grossly underestimated by the Agency; (3) the trucking industry is highly sensitive to interest rates, and interest rates are much higher now than projected in 1975; (4) because of inflation, the negative effects of the 1982 standard will be amplified; (5) the cost of the loss in fuel efficiency due to increased weight will be much greater than anticipated due to higher fuel prices; and (6) the Agency did not take into account in the original analysis that some transmissions would require quieting to meet the 1982 standard.

In a November 18, 1980 letter, the Agency asked IH for information to fill in gaps in the data used by IH to support several of its major contentions. On December 18, 1980, EPA staff met with IH staff at their Ft. Wayne, Indiana, facility to receive this information. A December 23, 1980 letter with enclosures from IH to EPA summarized the December 18 meeting and provided certain additional information. This letter also raised more specifically the issue of the current depressed truck market and the general economic state of the truck manufacturing industry.

Communications during the summer of 1980 from the Ford Motor Company and the General Motors Corporation requesting a delay in the effective date of the 80 dB standard for medium and heavy trucks also raised the issue of the economic state of the trucking industry.

On November 7, 1980, Mack Trucks, Incorporated (Mack) also submitted a petition for reconsideration of the 1982 medium and heavy truck noise emission regulation. Mack stated that its petition was basically in support of the IH petition, and raised the following concerns: (1) EPA has wrongly identified trucks as the number one surface transportation noise problem; (2) further reductions in truck noise will be masked by unregulated sources at highway speeds, especially tires; (3) the \$400 to \$500 price increase to meet the 80 dB standard may not be justified by the

benefits; (4) sound barriers will impose additional loads on truck cooling systems and lead to reduced preventive maintenance; (5) transmission sound levels may have to be reduced; (6) cost savings from the greater fuel efficiency of clutched fans cannot be ascribed to the noise regulation; (7) some highly customized vehicles may have higher than anticipated noise abatement costs; (8) larger mufflers may encroach on space for cab entrance and egress; and (9) the truck-mounted solid waste compactor noise emission regulation appears inconsistent with the truck noise regulation.

During this period, the Agency also received letters from several States opposing a withdrawal or deferral of the 1982, 80 dB standard, disagreeing with IH's characterization of the benefits as being minimal, and expressing their judgment that the standard is reasonable. Illinois suggested that if the 80 dB standard were withdrawn, it should be withdrawn in a manner that would allow Illinois to adopt an 80 or 75 dB standard. Three States expressed concerns with the Federal preemptive aspect of the existing 83 dB standard.

2.0 Discussion

The Agency has completed its analysis of the petitions submitted by IH and Mack, and the supporting information. The Agency finds that there is insufficient basis with respect to available technology, health and welfare benefits, and compliance costs, for a withdrawal of the 1982, 80 dB standard. The issues raised by IH and Mack in their petitions and EPA's response to those issues are discussed in detail in Section 3.0. However, on the basis of the current economic state of the industry, and the fact that both the industry and EPA did not predict the dramatic growth of medium diesel demand, the type of vehicle bearing the highest cost of compliance, the Agency believes that it is appropriate to defer the 80 dB standard for one year. When the regulation was promulgated, the truck manufacturing industry was on a healthy growth curve and there was adequate evidence that the industry could meet the 80 dB standard in 1982 and subsequent years. At that time, and in the intervening years, the issue of availability of noise abatement technology to meet an 80 dB standard has never been, and is not now, a serious contention by any party. Further, EPA has not found that its original cost estimates for the regulation, when compared in constant dollars, have

changed substantially today. However, the truck manufacturing industry has experienced an economic downturn in terms of total sales and corporate profits which is projected to continue into 1981, and in view of the unanticipated dramatic market shift from gasoline-engined medium trucks to the more costly-to-quiet diesel-engined medium trucks, the one year delay of the 80 dB regulation is expected to immediately provide some relief to the industry's cash-flow problems, which appear to be particularly acute at this time.

The data presented by the industry and other information immediately available to EPA support the general economic plight of the industry. Although EPA would have preferred more specific data concerning the immediate cash flow problems of the industry and the extent to which the 1982 standard would contribute to such cash flow problems, there remains inadequate time in which to examine these issues fully and still be in a position to grant necessary relief since purchasing commitments for the 1982 standard are now being made. Since the environmental consequences of granting the relief are mitigated by the fact that the deferral is for one year only, during which time the present 83 dB standard will remain in effect, the Agency concludes that such a short deferral is justified based on the available data.

The Agency does not believe that a longer postponement is appropriate or in the best interests of the public. Trucks are the nation's greatest single source of environmental noise. Traffic noise ranks as the number one noise problem in our urban areas and trucks contribute over half the noise due to traffic. The 80 dB regulation is expected to bring a substantial reduction in impact over the current 83 dB regulation. In addition, the greatest relative benefits are expected to accrue to those citizens who are presently exposed to the highest levels of traffic noise around their homes. Also, without a further reduction below the current 83 dB standard for trucks, reducing the levels of other sources of traffic noise would provide dramatically fewer benefits because of the otherwise masking and dominant effect of truck noise. Thus, the Agency considers the 80 dB regulation for medium and heavy trucks to be a crucial element in bringing about a significant reduction in community noise levels in the U.S.

In addition, in view of the fact that the current 83 dB Federal standard is

preemptive of conflicting State and local noise standards for newly manufactured trucks, that many State and local governments have been and are increasingly becoming active in the control of truck noise, and that several States have recently expressed concern about a deferral of the 80 dB standard, the Agency believes it is in the public interest to limit the length of any period of deferral.

However, recognizing that some parties affected by this action may argue that a one year deferral is either too long or too short, the Agency invites comments from interested parties on this issue, and specifically on whether or not a further deferral of the 80 dB regulation for medium and heavy trucks would be appropriate. Of particular interest to the Agency is information regarding: (1) the impact of any deferral on suppliers of components that would otherwise be used in the manufacture of new trucks to meet the 80 dB level; (2) the impact on State and local jurisdictions of any deferrals; and (3) the impact of the 80 dB regulation on cash-flow and corporate profits in the truck manufacturing and trucking industries.

3.0 Issues and Responses

The following is a summary of the primary issues raised by manufacturers in written submittals to petition the Environmental Protection Agency to defer or withdraw the 1982 regulatory level and the Agency's response to those issues.

3.1 Issue

It has been claimed that the Agency grossly underestimated the growth of the medium diesel market share, the vehicle class that bears the highest cost of compliance per vehicle. Thus, the inflationary impact of the 80 dB regulation will be much greater than originally estimated.

Response

Historical analysis and forecasting indicate that the medium truck market is rapidly becoming dieselized, as claimed. The EPA cost elements (see Appendix) have been updated to 1980 dollars and the economic effects reassessed based on the current fleet growth projection of Data Resources Institute (DRI), which averages 2.1% per year. A nearly identical growth rate (2%) is currently projected by the U.S. Department of Commerce. The Agency's original estimates of incremental quieting costs to meet the 80 dB level are presented in the table below.

Table 3.1.—Comparison of Estimated Quieting Costs, in Millions of Dollars, for Truck Manufacturers To Meet the 80 dB Regulation for the First Three Years Following the Effective Date of the Standard

Year	Original EPA estimates		Revised EPA estimates ¹ (1980 dollars)	1980 manufacturer's estimates (1980 dollars)
	(1975 dollars)	(1980 dollars)		
1982	110.2	187.2	148.0	111.2
1983	113.9	192.5	157.9	129.4
1984	117.9	200.3	165.2	143.0

¹ Revised EPA estimates are based on current (Fall 1980) economic forecasts of aggregate fleet growth prepared by Data Resources Incorporated (Data Resources I) and EPA market share projections reflecting current and projected market trends (Appendix, Figure A-3).
² Supplied to EPA by International Harvester Company 12/19/80.

Also presented are the original 1975 estimates updated to 1980 dollars, and further revised to reflect recent changes in market share and the more conservative 1980 estimate of sales trends. A comparison between the original EPA estimates of annual incremental costs to meet the 80 dB level (in 1980 dollars), and the estimates furnished by the claimant show that EPA was conservative; compared to the manufacturer's estimates, there would be a substantial reduction in inflationary effects. When EPA's revised 1980 estimates, which take into account medium-truck-market shifts and a more conservative sales forecast than used in 1975 (2.1% vs 3.3% per year), are compared with its original estimates (1980 dollars), a reduction of 22.5%, 10.4%, and 17.5% is seen for the years 1982, 1983, and 1984 respectively. On this basis the 80 dB regulation would be considerably less inflationary than EPA originally projected. While there are increased costs associated with the growing dieselization of medium trucks, these costs are, to some degree, counterbalanced by a reduction of costs to manufacturers due to a decline in truck sales. The total cost of the regulation is consequently not as great as originally estimated.

3.2 Issue

It has been claimed that EPA underestimated the noise abatement costs required for trucks to comply with the 80 dB regulation.

Response

In the Appendix contained in this notice, EPA has updated the noise abatement costs for medium and heavy trucks. This updating takes into account inflation and real cost increases that have occurred between 1975, when the original costs were determined, and December 1980. Not all truck manufacturers will experience the same abatement costs to comply with the 80

dB regulation. Some trucks are more costly to quiet than others. EPA has determined abatement costs on a per truck basis for each of the four categories considered in our original economic analysis. These costs represent sales-weighted industry averages that take into account abatement costs incurred by individual manufacturers which are then weighted to reflect their respective market shares. The table below summarizes EPA's updated noise abatement estimates and includes estimates supplied to EPA by three major truck manufacturers.

Table 3.2.—1980 Estimate of Noise Abatement Costs per Truck To Comply With 80 dB Regulation

Truck category	EPA	Manufacturer		
		1	2	3
Medium:				
Gasoline	\$307	\$120		
Diesel	\$78	\$90		
Heavy:				
Gasoline	269			
Diesel	449	\$15	\$400-600	\$500

As noted in the issue dealing with the increasing sales of medium diesel trucks, there is a discrepancy between the manner in which EPA and, in particular, one manufacturer classify trucks. EPA uses the weight classifications in common usage by the Department of Transportation, Interstate Commerce Commission and Motor Vehicle Manufacturers Association. EPA believes that differences in the cost data in the above table are partially due to the different truck classification schemes used, and the fact that EPA costs are sales-weighted in contrast to the manufacturer supplied costs. EPA has been unable to resolve these differences and, therefore, the data are not in complete agreement. However, EPA's noise abatement cost estimates are, on the average, higher and, therefore, more conservative than the manufacturers' estimates. EPA, in updating the economic analysis of the regulation, has used the more conservative cost figures and believes that the resulting economic impact projected by EPA overstates the actual cost of the regulation.

3.3 Issue

It has been requested that the 80 dB truck regulation be set aside because the Council on Wage and Price Stability (COWPS) in two statements, May 9, 1975 and July 8, 1975, evaluated the proposed 80 dB regulatory level as lacking economic justification.

Response

Both EPA and COWPS endeavor to determine the economic effects of compliance of a regulation by examining both the costs and potential benefits; therefore, the two assessments are similar in scope and magnitude. However, the benefits evaluation criteria differ substantially. The COWPS examines the cost effectiveness of a regulation purely in economic terms by assigning costs to the technology required to reduce the noise and examining such economic benefits as enhanced fuel economy and improved property values. COWPS does not attempt to place a dollar value on the potential public health and welfare benefits that are expected to occur from noise control, nor do they consider persons removed from impact, except to the extent these benefits are reflected in increased property values. The EPA evaluation considers all manufacturer and user costs related to the regulation. While the potential economic benefits of fuel economy are assessed, principal emphasis is placed on the potential health and welfare benefits to the public. Indeed, these latter benefits are the primary basis for the regulation, as required by the Noise Control Act. These health and welfare benefits are not assigned a dollar value, but rather are examined in terms of reduced adverse impact on people. Therefore, since the primary aim of EPA regulatory actions is to achieve health and welfare benefits, and since COWPS does not evaluate this element, it stands to reason that the COWPS assessment of the 80 dB truck regulation would be less favorable than EPA's assessment.

3.4 Issue

There is a contention that the trucking industry will be placed under a greatly increased burden as current interest rates are considerably greater than EPA predicted in 1975.

Response

EPA gave careful consideration to the trucking industry's sensitivity to high interest rates in 1975, in the context of possible delays in the granting of rate increases by the Interstate Commerce Commission. To avoid a drain on trucking industry cash resources, EPA stated that rate increases should be allowed to coincide with cost increases, including higher interest payments and capital costs. The U.S. Congress has recently eased the Interstate Commerce Commission's regulatory constraints on rate increases for trucking services. This deregulation of the trucking industry

mitigates the earlier potential problem of delays in rate increase pass-throughs needed to cover costs.

A higher interest rate due to inflationary pressures does not, by itself, pose a burden on an industry, provided that the resulting higher operating costs are passed-through to customers, thereby generating an equal increase in revenue. The increase in the price of trucking services would not necessarily cause a loss of business, since it would only bring the relative cost of trucking in balance with the concurrent increase in costs due to the same inflationary pressures on alternative modes of transportation.

The actual availability of capital at the interest rates being experienced in 1980 cannot be determined based on the information submitted and immediately available to the Agency.

The present economic analysis has de facto corrected for any errors in inflation and discount rates as predicted in 1975 by updating the economic baseline to actual 1980 data. The present growth trends and discount rates are considered reliable for predictions from the present into the future.

3.5 Issue

It was alleged that the 1982 regulation cannot, under the present conditions, be justified under a cost/benefit analysis.

Response

EPA's health and welfare analysis is based on fractional noise impact assessment, e.g., four real persons that are each 25 percent impacted are equivalent to one "level weighted person" (LWP) who is 100 percent impacted.

EPA's original health and welfare estimates indicated an additional reduction in LWP of 2.8 million achieved by the 80 dB regulation over those health and welfare benefits associated with the 83 dB regulation. Attendant with this reduction in LWP, EPA had originally estimated that the average incremental cost to manufacturers to comply with the 80 dB regulation would be \$193.7 million (1980 dollars) averaged over the first three years of the regulation. EPA has reassessed the health and welfare benefits expected from the 80 dB regulation, taking into account growth in the nation's population and the reduced growth rate in the truck fleet. This reassessment indicates a 37% increase in benefits (a reduction in LWP of 4.4 million) over that originally projected by EPA in 1975.

EPA has also reassessed the cost to manufacturers of complying with the 80 dB regulation, taking into account recent

market share trends and econometric projections for truck sales. The Agency's updated estimate of manufacturers' cost to comply averages \$156 million (1980 dollars) over the first three years of the regulation. This represents a 19.5% reduction in EPA's original estimate of the cost to comply with the 80 dB regulation.

Thus, the Agency's recent analyses of health and welfare benefits and compliance costs, indicates that the 80 dB regulation is more cost-effective than originally estimated.

3.6 Issue

It has been alleged that EPA included fuel savings due to the use of clutched fans in its cost benefit analysis, and that such inclusion is inappropriate since these components are being installed voluntarily.

Response

The Agency examined the fan clutch issue in detail during the regulatory development process and examined the cost of the regulation with and without the cost savings due to the greater fuel efficiency of clutched fans. However, the Administrator, in making his decision on the truck regulation, took into consideration the cost of the "worst case" situation, i.e., no fuel saving credit, and determined that the rule was justified based on the potential health and welfare benefits. Therefore, any savings due to fan clutches were not a determining factor in the original regulatory decision.

3.7 Issue

It has been noted that current fuel prices have increased by more than 100% over those used in the EPA's 1975 analysis. The manufacturers argued, therefore, that the cost of fuel efficiency loss due to the added weight of noise abatement components will be much greater than originally forecasted. Projected fuel price increases will continue to compound this situation.

Response

EPA has conducted an updated analysis, using current fuel cost figures based on the industrial products indices for gasoline and diesel fuel. This analysis was carried out to assess any changes in the annual incremental cost of fuel due to the weight of quieting hardware. The following table presents a comparison between the annual incremental costs estimated by EPA in 1975 and 1980.

Table 3.7—Incremental Cost per Year per Truck

	Original estimate	Revised estimate
Vehicle:		
Gasoline	\$1	\$3
Diesel	9	23
Truck:		
Gasoline	2	5
Diesel	15	41

These fuel costs are only a small part of the annual overall operating costs. We find this cost acceptable for the resulting reduction in noise.

3.8 Issue

It has been claimed that, with certain drivetrain combinations, transmission covers will be needed to meet the 80 dB regulatory level. Neither the product cost increase associated with the transmission redesign nor the cost of transmission covers was included by EPA in its original analysis. The claim is also made that the addition of transmission covers will increase the servicing costs above those originally projected by EPA.

Response

EPA has determined that widespread changes in transmission design are currently underway by several of the major transmission manufacturers. These changes were not initiated to accommodate the noise regulations. Rather, truck fuel efficiency and performance have dictated transmission redesign, in addition to the derating of engines and changes in axle ratios.

Noise reductions which can be achieved in parallel with this redesign are being incorporated with far less expense than would be the case if dealt with as the sole reason for redesign. The need for a specially designed quieted transmission to meet the 80 dB level is dependent on the noise level of the transmission in combination with other noise generating components of the truck, such as the engine, fan and exhaust. A reduction in noise emission of these other components may well negate the need for quieter transmissions.

EPA investigations indicate that certain drivetrain configurations will need transmission covers to comply with the 80 dB regulation. Using the manufacturer's estimates of the cost of these covers, the capital cost calculations have been updated as detailed in the Appendix. The resultant average increase in unit cost was 0.02% due to the small number of units affected.

Investigations and demonstrations currently underway by the

Environmental Protection Agency indicate that reasonable engineering design of enclosures for oil sumps, engines, and transmissions will result in minimal impact to serviceability.

3.9 Issue

It has been alleged that some medium duty diesel engine lines may not be usable in truck chassis regulated to the 80 dB level in 1982.

Response

EPA is aware that some models of medium duty diesel engines are more difficult to quiet to meet the 80 dB regulation than other models of medium diesels. The industry has been aware of this for a number of years. To quiet the noisier models imposes certain cost and weight penalties not encountered by competing models, thus reducing the attractiveness of the noisier designs. Such models will encounter reduced demand, and some lost sales may result. EPA has received information that alternative uses for these engines are available, for example, in marine applications. Thus, the Agency anticipates that truck-application engine sales losses due to the 80 dB noise regulation will be recovered, at least in part, by alternative applications. Furthermore, the industry has announced that several new and redesigned medium duty diesel engine lines will be introduced for sale in the 1982 timeframe. These engines are being designed to concurrently achieve greater power, less weight, higher fuel economy, reduced air emissions, and less noise. EPA expects that these new engine lines will substantially offset any lost sales in specific model lines due to potential engine obsolescence resulting from the 80 dB regulation.

3.10 Issue

It has been claimed that the noise treatments, especially sound barriers, needed by some manufacturers to comply with the 80 dB regulation will impose additional loads on truck cooling systems and promote a reduction in truck preventive maintenance.

Response

In the Background Document supporting the truck noise regulation, EPA acknowledged that, for many truck configurations, sound barriers would be necessary to comply with the 80 dB standard and that, for these configurations, additional cooling loads may be imposed. To handle the increased cooling loads, EPA's analysis took into account the incorporation of "off the shelf" components, which included improved fan and fan shroud

designs, as well as more efficient heat transfer radiators. These components were, and are, available for long-haul tractor/semi-trailers, as well as construction trucks. EPA has no reason to believe that the original assessment of the sound barrier requirements and cooling system changes was incorrect. EPA presumed, and continues to presume, that manufacturers will design their cooling systems with the eventual use of their trucks in mind. In so doing, manufacturers would likely incorporate fan, shroud, and radiator designs compatible with the sound barrier treatments applied to the trucks in their product lines.

As to the possible reduction in vehicle preventive maintenance, EPA recognized in the analysis supporting the regulation ("Background Document for Medium and Heavy Truck Noise Emission Regulation" (EPA 350/6-70-008), pages 6-23 through 6-28) that vehicle maintenance cost would be affected, and estimated the yearly cost increment to be \$103 (1973 dollars), which translates to about \$130 in 1980 dollars. EPA presumed that truck operators would protect their substantial investment by incurring the necessary increased maintenance costs, rather than reducing vehicle preventive maintenance. If the preventive maintenance were reduced, the increased cost could be foregone, although in the longer term substantial maintenance and/or operating cost consequences might result.

3.11 Issue

The claim has been made that the 80 dB regulation will result in the elimination of naturally aspirated diesel engines due to the inability of some engines to be turbocharged, and that this elimination will create an economic hardship to the customer by forcing the purchase of a turbocharged engine.

Response

EPA has ascertained that the diesel truck industry has made a wholesale move toward turbocharged engines. Evidence indicates that by 1982 the majority of engines will be turbocharged as a matter of course. This position is supported by the large percentage of turbochargers being installed on diesels today, although they are not required in order to meet the 1973, 80 dB noise standard. One manufacturer indicated that 99.5% of the engines in their chassis are currently turbocharged. The major motivations for turbocharging at this time appear to be customer demand for greater power, fuel economy, and air emissions benefits. In the near future, as truck engines become predominantly

turbocharged, EPA expects the cost ratio of turbocharged to naturally aspirated engines to decrease due to production efficiencies to the point where the cost differential would be offset by attendant savings in fuel. It would be expected that purchasers will increasingly select turbocharged engines, and that this market would continue to increase even absent the EPA regulation. There is no reason, however, for the regulation to eliminate naturally aspirated diesel engines from the market since such engines can meet the regulation requirements at less capital cost than turbocharging, if turbocharging was demanded solely for its less-noisy attributes.

3.12 Issue

It is alleged that manufacturers' difficulties in standardizing side shield placement on highly customized trucks will result in higher than anticipated vehicle costs.

Response

EPA recognizes that some vehicle configurations will be more difficult and costly to quiet than others; however, projected noise abatement cost to meet the 80 dB standard supplied to EPA by several manufacturers presumably include these more costly configurations. Since these noise abatement cost estimates to comply with the 80 dB standard have been found to be in substantial agreement with those projected by EPA, we conclude that while these highly customized vehicles may fall in the upper reaches of each manufacturer's noise abatement cost range, the average costs to meet the 80 dB regulation for manufacturers' overall product lines are not significantly different than those projected by EPA. Whether the problem associated with highly customized vehicles is a unique and serious one deserving of particular attention cannot be determined based on the manufacturers' submissions.

3.13 Issue

It has been alleged that the use of larger mufflers will encroach on the available space for cab entrance and egress.

Response

This issue was not raised by any of the vehicle manufacturers or muffler manufacturers during the development of the proposed regulation or the attendant public comment period, nor was this problem encountered in either the DOT or EPA Quiet Truck Programs. The manufacturer raising this issue indicated that its concern was

speculative. Without detailed technical evidence that such a problem will exist, the seriousness of this alleged problem cannot be ascertained.

3.14 Issue

The question has been posed as to whether trucks are the major source of surface transportation noise as EPA claims, and whether reductions in truck emission levels below the current 83 dB regulation will be masked by unregulated sources, such as tires, at typical highway speeds of 35 mph and above.

Response

EPA has identified trucks as the number one source of surface transportation noise. This finding is based on a careful, detailed analysis by EPA of vehicles operating on the nation's roadway system.

EPA's analysis considered all categories of vehicles involved in surface transportation, their noise emission levels as determined through field studies by both the EPA and the Federal Highway Administration, vehicle operational characteristics, typical traffic conditions, and the distribution of the population relative to the nation's streets and highways. The time phasing of regulated vehicles into the vehicle fleet and the contribution from tire noise under high speed conditions were taken into account. Deviant vehicles (i.e., poorly maintained, jouncing body components, etc.) were explicitly excluded from EPA's analysis. By excluding these deviant vehicles, EPA projections of truck noise health and welfare impacts are conservative.

The EPA analysis of the extent and severity of traffic noise impacts as functions of where they occur (i.e., local roads and streets, collectors, major and minor arterials, freeways, and interstates) shows trucks clearly to be the dominant source of traffic noise impacts. Currently, in excess of 80% of the impacts from traffic noise are from medium and heavy trucks. EPA knows of no studies which contradict its findings or which indicate that trucks will not continue to be the major source, even when the preponderance of medium and heavy trucks meet the 80 dB level.

EPA's analysis clearly distinguished between benefits that accrue to people exposed to urban traffic noise (low speed) where tire noise is only a very minor contributor, and to those exposed to freeway traffic noise (high speed) where tire noise is a significant contributor. This analysis shows that approximately 92% of traffic noise

impacts occur in the urban environment where tire noise is a relatively insignificant contributor.

EPA believes that 95% of the benefits from the 80 dB truck regulation will accrue to those who live in an urban environment. The focus of the medium and heavy truck noise emission regulation is not primarily aimed at the control of vehicles when they are operating in excess of 35 mph. This latter impact is controlled by an existing Federal regulation (40 CFR 202) which specifies maximum high speed (greater than 35 mph) noise levels for vehicles over 10,000 lbs. GVWR operated by carriers in interstate commerce.

3.15 Issue

It has been alleged, based upon the results from a health and welfare computer model developed by Battelle Laboratories:

1. That nine (9) million people, or only 4% of the nation's population will benefit from the 80 dB regulation.

2. This 4% will receive an insignificant and imperceptible daily average benefit of 0.6 dB at the cost of \$3 billion, twenty-six years from now.

3. This analysis represents an ultraconservative estimate in that the EPA's most quoted baseline limit of Ldn greater than 55 dB is a very conservative low end value that includes a built-in margin of 5 dB to 7 dB, below a level of "significant complaint" community reaction.

4. The EPA analysis assumes that the effect of an 80 dB regulation would be immediate, when realistically this is not the case.

5. A 1.0 dB change in level is likely to be the minimum detectable by the human ear and that other studies have noted that as high as a 5 dB change is required before the majority of the population can differentiate a significant change in traffic noise levels, and

6. It makes little sense to go to an 80 dB regulation since most of the benefits will be gained at the 83 dB level.

Response

The contentions rely heavily on results from the roadway traffic noise prediction model developed by Battelle Laboratories. From the description of the Battelle model supplied to EPA by a manufacturer, the EPA and Battelle models appear sufficiently similar so as not to be a major point of contention. However, the manufacturer's and EPA's interpretations of the model(s) output data are substantially different. Specific responses to each of the issues raised are presented below:

1. The only regulatory benefit from an 80 dB regulation recognized by the

manufacturer is the benefit to people who would be 100 percent removed from any adverse impact due to noise, which is approximately 9 million people. The estimate of 9 million people benefiting from the 80 dB standard represents the difference between the Battelle estimate of 104 million people living in areas with excessive levels of noise with an 83 dB regulation, and the Battelle estimate of 95 million people not 100% removed from impact after an 80 dB regulation. This contention fails to acknowledge that the remaining 95 million persons, although not totally removed from impact, will realize varying levels of reduced impact, and thus would experience a quieter, more livable environment. In fact, those persons who are presently exposed to the highest levels of traffic noise will receive the greatest degree of relief, a fact not acknowledged in the contention. Therefore, the population potentially benefited is considerably greater than the "mere 4 percent" claimed. EPA's method of evaluating benefits has the endorsement of the National Academy of Sciences expert committee on bioacoustics.

The contention also fails to recognize an anticipated growth in the U.S. population and associated increases in traffic volume. Considering both population and traffic growth, EPA estimates that 126 million persons will be adversely impacted to some degree by traffic noise in the year 2001 with trucks regulated to 83 dB.

2. The contention that a benefit of 0.8 dB reduction in average daily noise level cannot be perceived, indicates a confusion of the concept of noise level with that of noise exposure. While noise level differences on the order of 0.8 dB between two successive truck pass-bys may be imperceptible, such differences in average community noise exposure over long periods of time are quantifiable and are quite meaningful in terms of overall community response. Further, the analysis is in error with respect to the time period over which costs will be incurred. The costs of the regulation will not accrue in one lump sum; they will be spread over the entire 26 year period required for total truck fleet turnover to 80 dB vehicles.

3. The analysis is in error in stating that its estimates of benefits are ultraconservative since EPA's identified level of 55 dB to protect public health and welfare includes a built-in margin of 5 to 7 dB below a level of significant community complaint reaction. The EPA identified level was agreed upon by internationally recognized experts as a level below which the U.S. population

would not be at risk from noise exposure. If anything, recent community survey data suggest the identified level of 55 dB may be too high.

4. EPA analysis has never assumed that the "effect" of this regulation would be immediate. The rate of vehicle turnover in the fleet was considered and the full benefits and full costs of the regulations were not expected to accrue until the truck fleet has been fully replaced by quieted trucks in the year 2000.

5. The statements about minimal detectable changes in sound level are valid when considering a single exposure to noise. However, as stated previously, the manufacturer has confused noise level changes with noise exposure changes. Even small changes in noise exposure are significant.

6. The argument that it makes little sense to go to an 80 dB truck regulation since most of the benefits would be gained with an 83 dB level, erroneously assumes that no significant benefits would be gained below an 83 dB level. EPA projects that in the year 2001, an 83 dB regulation would reduce impacts by 19.0 percent, while the 80 dB regulation would provide a benefit of approximately 27.3 percent, an additive 8.3 percent reduction. A more stringent limit of, say, 75 dB would yield benefits of about 35 percent. The benefits therefore, of going from an 83 dB to an 80 dB regulation, are significant.

3.16 Issue

The question has been raised as to the compatibility of the medium and heavy truck noise emission regulation with the noise emission regulation for truck-mounted solid waste compactors.

Response

The truck-mounted solid waste compactor (compactor) regulation was developed to be compatible with the existing truck regulation. The noise emission levels established for compactors are predicated, in large part, on the noise emission of the truck chassis. Therefore, the 83 dB and 80 dB truck noise regulations and their attendant effective dates served as the basis for the 79 and 76 dB compactor regulations and their respective effective dates.

The relationship between the different noise emission measurement schemes and levels for the truck and compactor regulations was carefully assessed. Under the truck emission regulation, a truck accelerating to, or away from, a pick-up site is permitted to generate a higher peak noise level than is permitted during compaction. The contention that the regulations are not compatible,

based on a simple comparison of a distance-adjusted peak emission level during acceleration with a stationary compaction cycle level, is erroneous.

To properly compare the truck emission level and compactor level, the peak emission level during acceleration must be converted to an average or equivalent level by properly considering the acceleration noise level as a function of time and distance and then adjusting for the relative duration of acceleration as compared to compaction. When this is done, the comparison becomes 79 dB for the compactor and 78.1 dB for the 83 dB truck, not 79 vs. 80 as contended. For the 76 dB compactor and 80 dB truck, the proper comparison is 78 dB for the compactor and 75.1 dB for the truck. Thus the compactor and truck emission levels are quite compatible, and the compactor regulation is not overly stringent in comparison with the truck regulation.

In response to an assertion that the engine in some vehicles is still a major noise source, even at low speeds, without specific data it is impossible to evaluate this claim. Data from other manufacturers show the expected lower noise levels at lower engine speeds.

As presented in the Regulatory Analysis (Reference 2) for the compactor regulation, the compactor standard is easily met. Recent data indicate that the noise abatement costs for quieted compactors are actually less than the EPA original estimates. EPA has received no data or information which contradicts this analysis.

4.0 Conclusion

Therefore, for the reasons discussed above, the Agency has concluded that the 80 dB standard for medium and heavy trucks should not be withdrawn but should be deferred for one year.

Pursuant to the Administrative Procedure Act (5 U.S.C. 553b), EPA finds that the normal procedure of publishing a notice of proposed rulemaking and receiving public comment before establishing final amendments would be impracticable and contrary to the public interest with respect to this amendment of the truck regulation. The mandatory dates for manufacturers to make ordering commitments to suppliers for production of components for their 1982 trucks are imminent, and would be significantly passed if notice-and-comment procedures were followed. The basic purpose of this action is to allow the industry to defer those costs associated with the 80 dB standard for one year. Any further delay in effecting this deferral would substantially reduce the amount of expenditures that could

otherwise be deferred and would defeat the purpose of this action. However, even though this is a final action by the Agency, the Agency will accept comments from the public on this action until 4:30 p.m. on April 24, 1981.

With respect to amendment of the truck-mounted solid waste compactor regulation, the Agency finds further, that notice-and-comment procedures are unnecessary and contrary to the public interest because compliance with the 76 dB standard of this regulation is predicated upon the availability of truck chassis meeting an 80 dB standard.

EPA has determined that this action is not a "significant" regulation, and therefore, does not require a Regulatory Analysis in accordance with Executive Order 12044.

This amendment is issued under the authority of Section 6 of the Noise Control Act, 42 U.S.C. 4905.

Dated: January 19, 1981.

Douglas M. Costle,
Administrator.

§§ 205.52, 205.202 [Amended]

40 CFR Part 205 is amended by removing the word "1982" and inserting, in its place, the word "1983" in paragraph 205.52(a) of Subpart B, and in paragraph 205.202(a) of Subpart F. (Sec. 5, Pub. L. 92-574, 90 Stat. 1237, (42 U.S.C. 4905))

Editorial Note.—This appendix is printed for information purposes only and will not be reprinted in the CFR.

Appendix to Preamble-Revised Economic Analysis of the Medium and Heavy Truck Noise Emission Regulation

Review of the baseline production and market share trend data submitted by two major truck manufacturers in their petitions to EPA indicated: (1) Significant shifts in truck class purchases, (2) a general decline in total sales and (3) reduced rate of fleet growth since 1973 when the EPA original economic analysis supporting the medium and heavy truck noise emission regulation was completed. Subsequent analysis by EPA of historical truck sales data and available projections for future sales tended to support the petitions' claims. These changes, which could not have been anticipated in 1973, have been taken into consideration in this revised EPA analysis. Projections of costs, sales, and market shares, have been updated to assess the potential economic effects on the industry. A principal element in this revised analysis is the categorization of trucks.

The industry categorizes trucks by three different schemes. The first of these is to classify a truck according to its intended use or "duty." This is usually a combination of load rating, engine power and torque, and truck configuration (i.e., fixed body, van, etc.). The second scheme is the gross vehicle weight rating or GVWR (Table A-1) which rates a truck purely on the load carrying capacity of the vehicle. The third scheme is a

further division of the GVW Rating into medium trucks as those in GVWR 3-6 and heavy trucks as those in GVWR 7 and 8.

Most truck manufacturers elect to use the medium/heavy classification in classifying their vehicles as does the EPA. There is one manufacturer who elects to follow their own scheme. For this reason market share data from this source does not exhibit the same distribution of chassis, engine, and GVW Rating as the majority of the industry.

Market Analysis

Analysis of historical sales and market share data published by the Motor Vehicle Manufacturers Association (MVMA) in their statistical annual reports, show (Figure A-1) that, even in a fluctuating sales market:

(1) GVWR category 6 is steadily capturing an increasing share of the truck market.

(2) Taken separately, categories 3, 4, and 5 show similar market share trends and, when combined, their market share has generally declined.

(3) After a 5-year period of sustained growth, the market share of category 6 vehicles appears to dramatically decline between 1979 and 1980.

(4) For a 10-year period, category 7 represented a fairly constant share of the truck market. Beginning in 1978, however, the market share for category 7 shows a dramatic increase that continued through 1980. This dramatic growth in category 7 is in direct contrast to the decline of the market share of category 6.

The markedly diverse market behavior in 1979 and 1980 of categories 6 and 7 trucks raises questions as to the cause of the apparently inverse growth patterns. A review of the variations on basic medium truck models offered within the medium class indicate a consistent skewing toward those intended for heavy duty use rather than the lighter 3, 4, and 5 categories.

This skewing may be interpreted as an attempt of certain manufacturers to offer purchasers of medium truck chassis higher load-carrying capabilities at costs below the heavy duty truck category. The market share data in Figure A-1 shows that purchasers of category 6 trucks are apparently shifting to those of GVWR 7 and 8 which are basically medium truck chassis with greater horsepower engines and an additional axle to increase their load carrying capability. This shift could be the result of a desire to carry greater payloads to offset increased fuel and capital costs. EPA believes there will be insignificant downgrading of category 6 heavy trucks to category-7 medium trucks due to the normally high initial cost differential between the two categories; marginal needs for increased load carrying capability would not justify the added cost.

From a noise quieting perspective, medium trucks are more costly to quiet than heavy trucks since medium trucks offer less potential for chassis and engine compartment redesign. The "upgrading" of category 6 medium trucks produces in essence a heavy truck but at the higher quieting costs of a medium truck.

Thus, it now seems appropriate to include a percentage of GVWR category 7 trucks in the medium duty category for the purpose of

determining noise quieting costs. For this analysis EPA elected to combine the total market shares of GVWR categories 6 and 7 (Figure A-3). This conservative approach removes the dramatic market fluctuations in the period 1976-1980, as shown in Figure A-1, and more correctly applies the true quieting costs associated with GVWR 7 trucks.

The prediction of future market shares (Figure A-3) was developed from data prepared by Chase Econometrics and supplied to EPA by International Harvester. The dotted lines and circled points on Figure A-3 represent Chase Econometric predictions for future market shares and align very well with the historical trends. The boxed points in Figure A-3 represent EPA's estimates of the market share for the combination of categories 3, 4, and 5. The industry did not provide data for these categories.

Dieselization of the truck fleet shown in Figure A-4, was estimated from historical data obtained from MVMA (3) and a combination of industry and government forecasts for the future. (4) EPA's Mobile Source Air Programs Office estimated (5) full conversion to diesel engines in GVWR category 6 by 1984 and 20 percent diesel penetration for categories 3, 4, and 5 by 1990. Commercial Car Journal (6) claims that GVWR category 6 will be 80 percent diesel by 1990. Using this latter estimate for both categories 6 and 7, and the EPA Air Programs estimates for categories 3, 4, 5, and 6, straight line projections from current (1980) diesel penetration to 1990 were made. Beyond 1990 diesel penetration was assumed to hold constant.

To estimate the future growth of the total medium and heavy truck market, EPA consulted MVMA, the Engine Manufacturers Association (EMA), the Truck Manufacturers Association (TMA), Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), Office of the Secretary of Transportation, Transportation Systems Center (DOT/TSC), the Department of Commerce Bureau of Industrial Economics (BIE), Office of Management and Budget (OMB), and the President's Automobile Industry Council. Of these sources, only BIE and TSC were prepared to provide growth forecasts. The BIE projection is a short term projection to the mid-1980's. TSC provided long-term projections made by Data Resources Incorporated (DRI). The DRI forecasts are generated by a national econometric model that incorporates both trend analysis and business cycle considerations. The DRI forecasts were made in the Fall of 1980 and therefore include data reflecting current economic conditions and the present state of the trucking industry. EPA has used the DRI projections because they appear to represent the best available forecasts.

Cost Comparison

A comparison of the estimated costs associated with the 60 dB regulation (given that the 63 dB regulation is already in place) is presented below. Tables A-2 thru A-4 present EPA's estimates of unit base prices, incremental noise abatement costs and operating costs. The 1973 estimates are from the Background Document supporting the

regulation. The 1980 estimates are based on the latest economic indices supplied by the Bureau of Labor Statistics.

Table A-2 shows a 70 percent increase over 1975 estimates of the sales-weighted unit price of an unregulated truck, i.e., cost increases due to factors other than 83 dB and 80 dB quieting requirements.

Table A-3 shows a comparable 70 percent increase in the 1975 estimated costs to reduce the noise level from 83 to 80 dB. Potential added cost increases due to the possible need for transmission covers, not considered in EPA's 1975 analysis, range from zero for heavy gas to less than 3 percent for medium gas trucks.

Table A-4 compares estimates of annual fuel and maintenance costs. The increases in fuel costs over that estimated in 1975 range from 150 percent for heavy gas to 200 percent for medium gas, based on average fuel costs of \$1.59 per gallon for gas and \$1.23 per gallon for diesel. The maintenance costs have also risen between 46 and 48 percent from those estimated in 1975.

The above increases in estimated costs, with the exception of transmission cover costs, do not represent any technology requirements different from those originally anticipated for the 80 dB regulation.

Comparative Economic Analysis

In order to assess the change in potential economic impact between 1975 and 1980, due to changing costs, shifts in market shares, and changes in general sales trends, a comparative analysis was carried out between: (1) The original 1975 EPA analysis, (2) the original EPA analysis adjusted for 1980 costs as listed in Table A-3, (3) a revised EPA estimate which incorporates 1980 cost elements, including transmission covers, plus the most recent and complete (DRJ) predictions of fleet growth, shifts in market share, and dieselization projections, and (4) cost estimates submitted to EPA by International Harvester Company (12/18/80).

The sales forecasts for the EPA analyses are presented in Figures A-2, A-3, and A-7. Comparison of Figures A-6 and A-8 illustrates the effects of increased dieselization between 1975 and 1980, and market shifts, all other factors being equal.

A comparison of Figures A-6 and A-7 illustrates the dramatic change in predicted aggregate growth rates for each vehicle category. The substantial reduction in anticipated fleet growth, compared to EPA's 1975 estimates, results in substantial reductions in present estimates of aggregate annual costs that manufacturers would incur in quieting their trucks to comply with the 80 dB regulation.

Summary

The results of the comparative analyses are presented in Table A-5 in terms of costs to meet the 80-dB regulation for the first three years following the effective date of the regulation.

The manufacturer's estimate of cost in 1980 dollars is substantially less than EPA's original cost estimate updated to 1980 dollars. Furthermore, comparing the Agency's revised

1980 estimates with its original estimates in 1980 dollars, reductions of 22.5%, 18.4%, and 17.3% are seen for the years 1982, 1983, and 1984 respectively. On this basis, the 80 dB regulation would be considerably less costly than originally projected by EPA.

References

- (1) "Background Document for Medium and Heavy Truck Noise Emission Regulations", USEPA, Washington, D.C., March 1976.
- (2) "Regulatory Analysis of the Noise Emission Regulations for Truck-Mounted Solid Waste Compactors", USEPA, Washington, D.C., August 1979.
- (3) "NEMA Motor Vehicle Facts and Figures '80", Motor Vehicle Manufacturers Association of the United States, Inc., Detroit, Michigan.
- (4) "Data Resources Long-Term Review", Data Resources Incorporated, Fall 1980.
- (5) "Regulatory Analysis and Environmental Impact of Final Emission Regulations for 1984 and Later Model Year Heavy Duty Engines", USEPA, Washington, D.C., December 1979.
- (6) "On What's Available in Mid-Range Diesel Truck", pp 74-97, Commercial Car Journal, Chilton Publications, January 1980.

Table A-1.—Comparison of Gross Vehicle Weight Rating and Truck Categorization Schemes

Gross vehicle weight rating in pounds	Truck category	Industry categorization
10,001 to 14,000	2	Medium
14,001 to 16,000	4	Medium
16,001 to 18,000	5	Medium
18,001 to 24,000	6	Medium
24,001 to 32,000	7	Heavy
Over 32,000	8	Heavy

Table A-2.—Sales-Weighted Unit Base Prices for Trucks (Unregulated)

Truck category	1975	1980 ¹	Percent change ¹
Medium gas	\$7,070	\$12,018	+70
Medium diesel	8,818	11,157	+70
Heavy gas	14,058	22,91	+70
Heavy Diesel	21,021	32,73	+70

¹ Bureau of Labor Statistics (BLS) Producer Price Index (PPI), 1975 184.1, 1980 251.8.

Table A-3.—Comparison of Estimated Incremental Noise Abatement Costs to Meet 80-dB Regulation From Current 83 dB Regulation by Truck category

Truck category	EPA, 1975 including transmission covers	1980 ¹ including transmission covers	1980 ² including transmission covers
Medium gas	\$176	\$29	\$307
Medium diesel	\$13	\$72	\$78
Heavy gas	136	209	250
Heavy Diesel	232	475	487

¹ BLS: PPI 1975 184.1, 1980 251.8.

² Sales-weighted costs based on costs submitted to EPA by International Harvester Company (12/18/80).

Table A-4.—Comparison of Estimated Increases in Operating Costs in Going From Current 83 dB to 80 dB Regulation

Truck category	Increase average annual fuel costs at 80 dB		Increase average annual maintenance costs at 80	
	1975	1980 ¹	1975	1980 ²
Medium gas	\$1	\$3	\$22	\$3
Medium diesel	8	23	60	60
Heavy gas	2	5	45	45
Heavy Diesel	15	41	103	103

¹ BLS: Industrial Products Index, Gas 1975 222.8, 1980 251.8, Diesel 1975 248.0, 1980 281.1.

² BLS: Wage Price Index 1975 161.8, 1980 288.8.

Table A-5.—Comparison of Estimated Quieting Costs, in Millions of Dollars, for Truck Manufacturers To Meet the 80 dB Regulation for the First 3 Years Following the Effective Date of the Regulation

Year	Original EPA estimate (1975 dollars)	Original EPA estimate (1980 dollars)	Revised EPA estimate (1980 dollars)	100% Market share (1980 dollars)
1982	115.2	167.2	148.0	11
1983	115.2	167.2	148.0	11
1984	117.3	207.5	168.2	14

¹ Revised EPA estimates are based on current (Fall 15) economic forecasts of aggregate fleet growth projected by Data Resources Incorporated (Reference 4) and EPA market share projections reflecting current and projected market shares (Reference, Figure A-7).

² Supplied to EPA by International Harvester Company, 12/18/80.

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Figure A-1 Historical Truck Market Share by GVWR
Obtained from MVMA (Source: Reference 3)

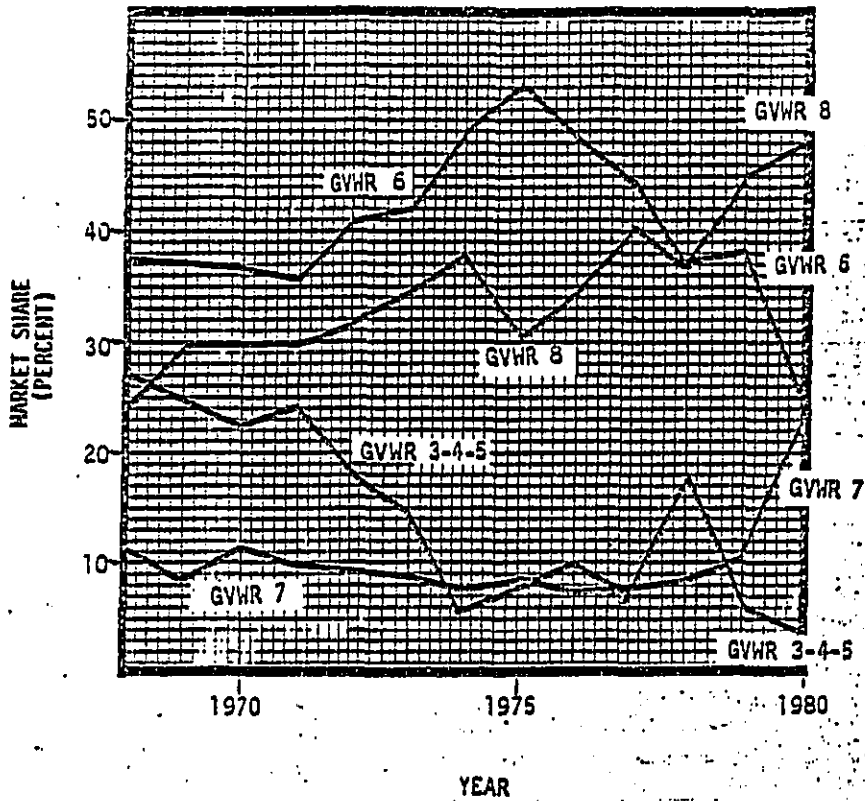
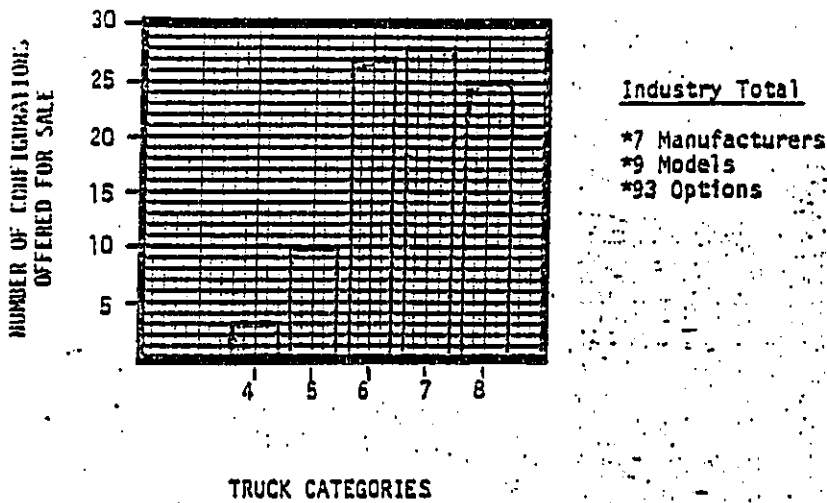
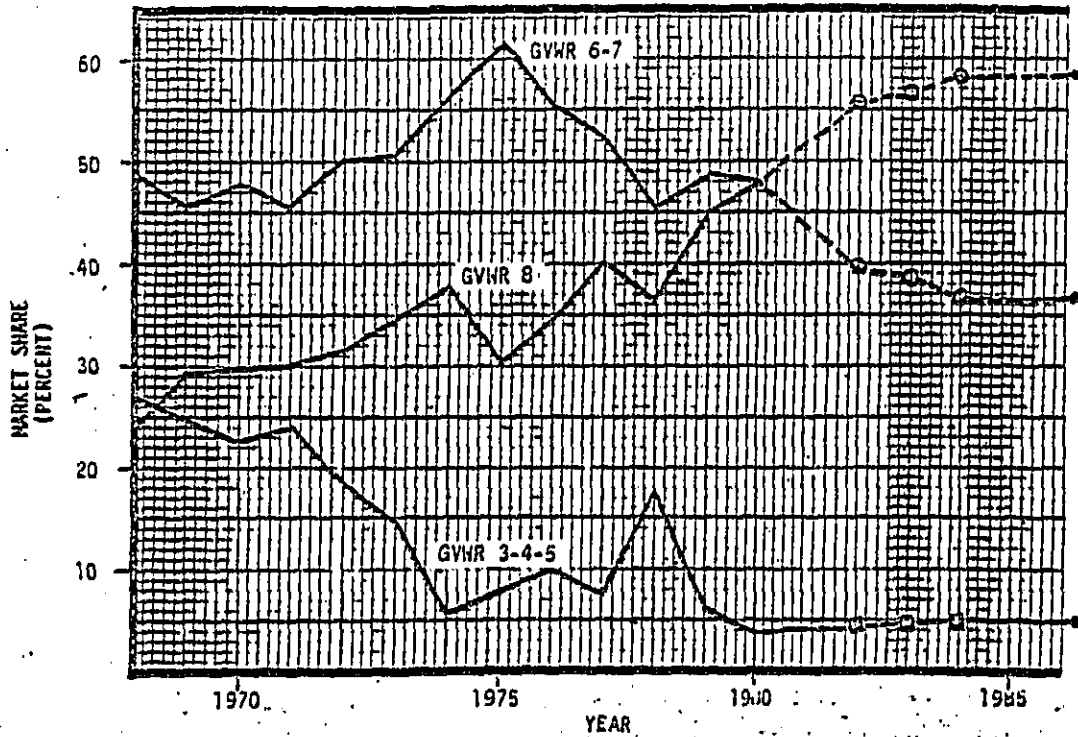


Figure A-2 Distribution of "Medium Truck" Configurations by GVW Rating Option (Source: Commercial Car Journal, 11/19/80)



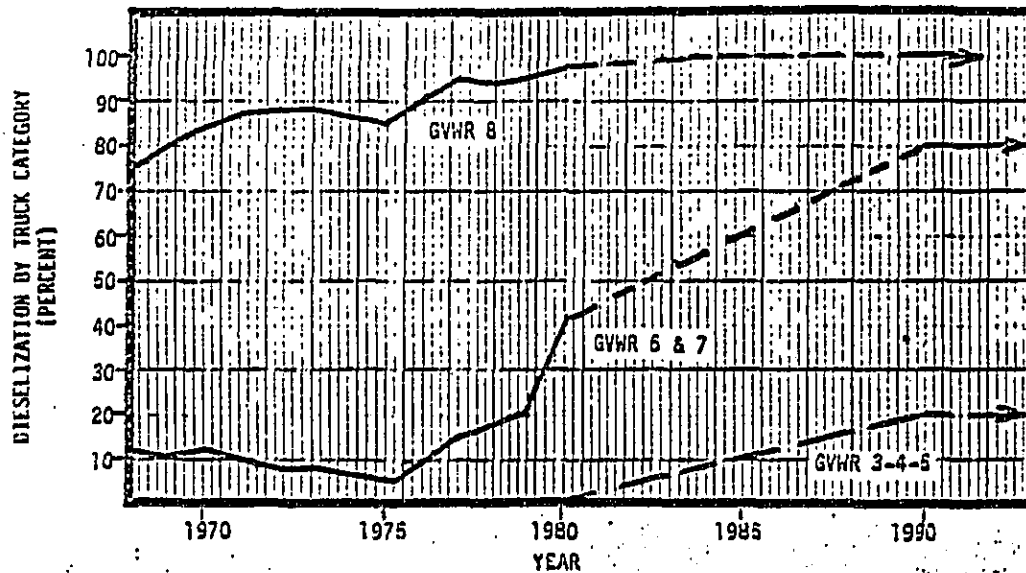
Note: The load carrying capability of a medium truck dictates its category classification

Figure A-3 Realigned Market Shares by Truck Category



Note: Predictions for years beyond 1980 in Categories 6, 7, and 8 are based on data provided to EPA by International Harvester Company. Predictions beyond 1980 for categories 3, 4, and 5 are based on EPA's market share estimate of 5% for these combined categories.

Figure A-4 Dieselization of Trucks by Truck Category



Note: Data prior to, and including 1980, are based on historical information provided by MVMA (Reference 3).—Beyond 1980, GVWR 8 and GVWR 3-4-5 represent EPA estimates; GVWR 6 & 7 represent CCJ projections (Reference 6).

Figure A-5 EPA 1975 Truck Production Forecast
(Source: Reference 1)

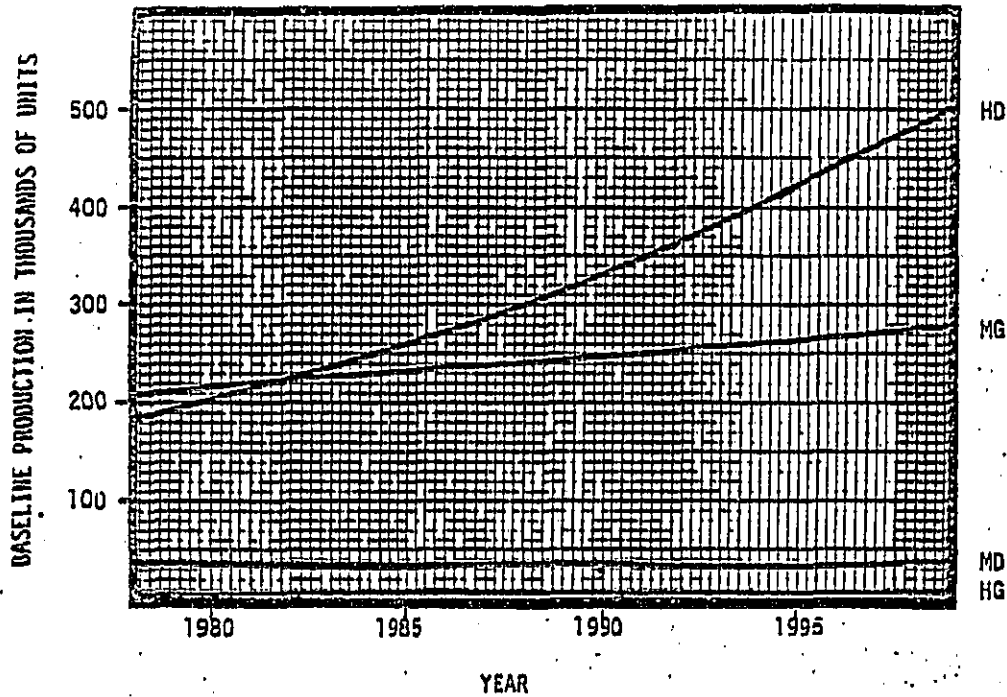


Figure A-6 Truck Production Forecast Utilizing Updated Market Share Projections and 1975 EPA Aggregate Growth Projections

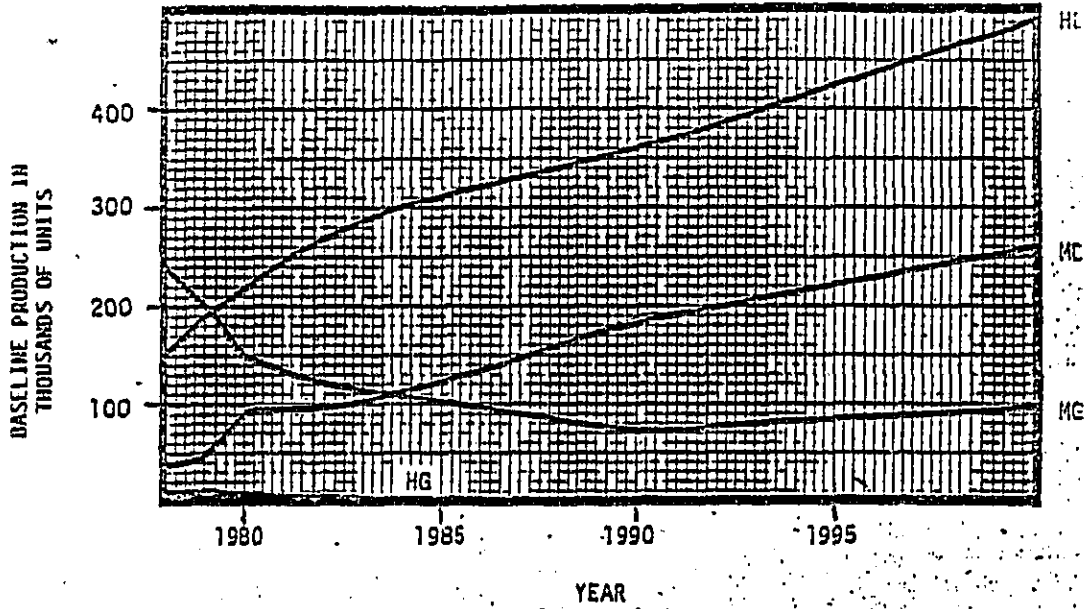
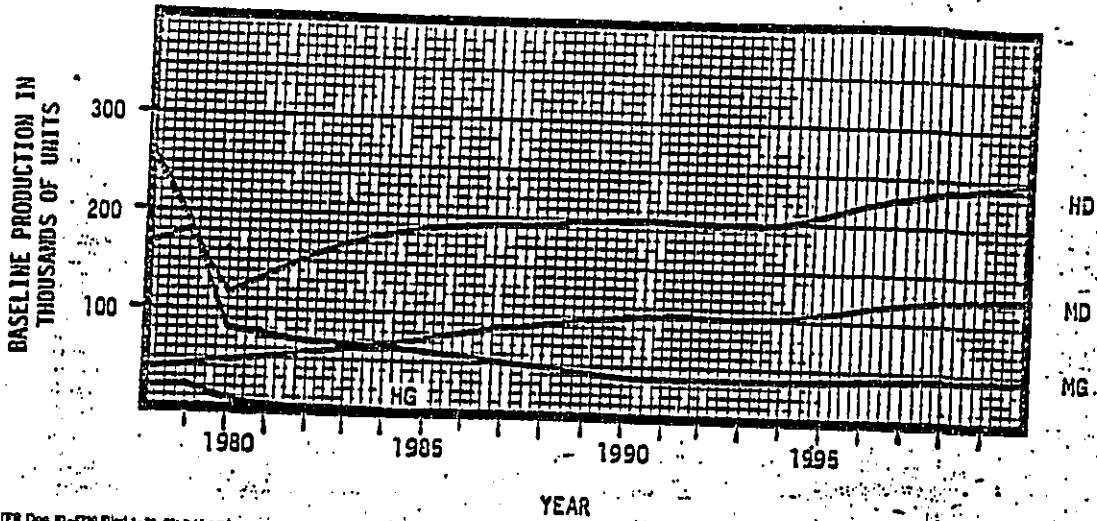
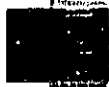


Figure A-7 Truck Production Forecast Utilizing EPA/Chase Econometrics Updated Market Share Projections and DRI Aggregate Growth Projection



[FR Doc. 81-0730 Filed 1-29-81; 8:48 am]
BILLING CODE 8440-07-C



ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Part 205

[AM-FRL 1931-2]

Noise Emission Standards: Medium
and Heavy Trucks—Truck-Mounted
Solid Waste CompactorsAGENCY: Environmental Protection
Agency (EPA).ACTION: Deferral of effective dates;
Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) hereby defers the effective date for the noise emission standard of 80 decibels (dB) for medium and heavy trucks from January 1, 1983 to January 1, 1986. This action is being taken after consideration of comments and new technical information that were received by the Agency in response to two Federal Register notices: One dated January 27, 1981 (40 FR 8497) which deferred the original effective date from January 1, 1982 to January 1, 1983 in response to requests for near-term economic relief from truck manufacturers and users; and the second notice of March 19, 1981 (40 FR 17338) which solicited public comment as to whether the Agency should consider withdrawal of the 80 dB standard.

The Noise Control Act of 1972 requires that the Administrator of EPA set limits on the noise emissions of new products distributed in commerce, that are requisite to protect public health and welfare, taking into account the use of the product (alone or in combination with other products), the degree of noise reduction achievable with best available technology, and the costs of compliance.

In consideration of the present economic state of the truck industry and the potential interrelationship of design changes that may be required to meet the 80 dB standard with technological innovations now being considered to reduce exhaust emissions and improve fuel economy, the Administrator has concluded that an additional three-year deferral of the 80 dB standard for medium and heavy trucks to 1986 is appropriate. Thus, the purpose of this deferral is twofold: First, to provide near-term economic relief to the truck industry by allowing them to temporarily divert those resources that would otherwise be used to comply with the 1983 80 dB standard to help meet their near-term economic recovery needs, and second, to permit manufacturers to align and economize the design requirements attendant to the 80 dB standard with improved fuel economy designs and Federal air

emissions standards anticipated in the 1986 timeframe.

This action is expected to introduce only a small loss in near-term health and welfare benefits due to the delayed entry into the fleet of trucks quieted below the current Federal regulatory level of 83 dB. This deferral should have no adverse effects on the total benefits anticipated in the out-years.

Because the Federal noise emission standard for truck-mounted solid waste compactors is closely related to the noise level of medium and heavy truck chassis, the effective date for the 78 dB compactor standard is also being deferred by this notice, from July 1, 1983 to July 1, 1986.

EFFECTIVE DATES: All medium and heavy trucks manufactured after January 1, 1980 must not emit a noise level (A-weighted) in excess of 80 dB when measured as prescribed in 40 CFR Part 205, Subpart B, Noise Emission Standards for Medium and Heavy Trucks (41 FR 15538).

All truck-mounted solid waste compactors manufactured after July 1, 1986 must not emit a noise level (A-weighted) in excess of 78 dB when measured as prescribed in 40 CFR Part 205, Subpart F, Noise Emission Standards for Truck-Mounted Solid Waste Compactors (44 FR 58324).

These amendments take effect on or before March 19, 1982.

ADDRESSES: Copies of the public docket (ONAC Docket 81-02—Medium and Heavy Trucks); the Agency's analysis of the comments to the Docket; the Agency report entitled, "Updated Analysis of the Benefits and Costs of the 80 dB Noise Emission Regulation for Medium and Heavy Trucks"; related correspondence; and other documents supporting these amendments are available for public inspection between the hours of 8:00 a.m. and 4:00 p.m. at the Central Docket Section of the Environmental Protection Agency, West Tower, Gallery 1, 401 M Street SW, Washington, D.C. 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Timothy M. Barry, Program Manager, Standards and Regulations Division, (ANR-490), U.S. Environmental Protection Agency, Washington, D.C. 20460; or phone (703) 557-2710.

SUPPLEMENTARY INFORMATION:**I. Background**

EPA published noise emission regulations for newly manufactured medium and heavy trucks on April 13, 1978 (41 FR 15538). The regulations required that trucks having a gross

vehicle weight rating (GVWR) greater than 10,000 pounds and manufactured after January 1, 1978 meet a not-to-exceed noise level of 83 dB when measured in accordance with the specified test procedure. Trucks manufactured after January 1, 1982 were required to meet a not-to-exceed noise level of 80 dB.

In response to petitions for reconsideration of the 80 dB standard which were submitted by International Harvester Company and Mack Trucks, Incorporated, the Agency on January 19, 1981 (published in the Federal Register on January 27, 1981 (40 FR 8497)) deferred the effective date of the 80 dB noise emission standard for medium and heavy trucks one year, from January 1, 1982 to January 1, 1983. The notice further stated that because the 78 dB noise emission standard for truck-mounted solid waste compactors is related to the availability of 80 dB truck chassis, the effective date of that standard was also being deferred one year, from July 1, 1982 to July 1, 1983.

The Agency believed that this action would provide adequate temporary economic relief to the truck manufacturing industry by freeing resources that would otherwise be expended in 1981 to bring their medium and heavy trucks into compliance with the 1982, 80 dB regulation.

The Agency anticipated that some parties affected by the 80 dB standard might consider the one-year deferral either too long or too short. To ensure maximum consideration of both industry and public concerns, the deferral notice also established a 90-day public comment period and specifically invited comment and new information on whether a further deferral of the 80 dB standard, beyond one year, might be warranted. On March 15, 1981 the Agency issued a second Federal Register notice (40 FR 17338) that requested public comment on whether or not the Agency should consider withdrawing the 80 dB standard for medium and heavy trucks. The public docket (ONAC Docket 81-02—Medium and Heavy Trucks) for both notices closed on April 24, 1981.

II. Discussion

Analysis of the comments and new technical and cost information received in response to the Agency's January 27, and March 19, 1981 Federal Register notices revealed no new substantive issues from those previously addressed in detail in the January 27, Federal Register notice (40 FR 8497) that effected the one-year deferral. The Agency's analysis and responses to these

comments is available for public inspection in the public docket of this rulemaking (see "Addresses").

In their comments submitted to EPA, the truck industry requested that the Agency rescind the 80 dB standard entirely or at least defer the standard until such time that the Agency has had an opportunity to fully re-evaluate its benefits and costs. The truck industry, however, supported retention of the current Federal 83 dB noise standard, citing its environmental benefits and the pre-emption it affords truck manufacturers over non-identical State and local rules.

On the other hand, comments received from six State and three local governments requested the Agency not to withdraw the 80 dB standard. One State cited the potential adverse economic effects on its noise barrier program should the 80 dB rule be rescinded. Two States recommended that, in the event EPA decides to withdraw the 80 dB standard, it should rescind the truck regulation in its entirety, thereby removing the present 83 dB standard, along with its pre-emption of State and local rules, leaving noise control of these products totally up to State and local governments.

Seven truck manufacturers submitted new cost and pricing data that reflect their current assessment of possible price increases to meet the 80 dB noise standard in 1983. In addition, EPA also compiled comprehensive quieting, operational and maintenance cost data that recently emerged from its on-going Quiet Truck Demonstration Program. Taking these new data into consideration, the Agency updated its economic assessment of the 80 dB truck standard. The revised quieting costs show that, on the average, the 80 dB standard can be expected to increase the price of a new truck by approximately \$270, which represents an increase of about one percent in the average price of a new truck. Further, the 80 dB standard may also be expected to increase the average annual operating costs by about 0.07 percent or by about \$42 per truck per year.

The revised cost and pricing information that the industry provided to the Agency revealed a reduction in estimated compliance costs compared to previous estimates. However, the Noise Control Act of 1972 requires the Administrator to take costs of compliance into consideration in setting feasible noise standards. Based on the most recent cost data, EPA has estimated that a near-term capital investment of approximately \$40 million may be required of truck manufacturers to comply with the 80 dB standard. In

light of the present economic state of the industry, this diversion of resources could impose an economic burden on the truck industry during a time when the industry is focusing its attention on recovery and endeavoring to effect an upturn in its markets.

Further, several manufacturers requested that any deferral of the effective date of the 80 dB standard take cognizance of the anticipated effective dates of future Federal air emissions standards for total suspended particulates and nitrous oxides. These manufacturers stated that coordination of the effective dates for the noise and anticipated future air standards would allow truck manufacturers to effect designs that would meet the needs of both standards at the same time, thus resulting in potentially significant reductions in design and engineering costs.

The Agency has given careful consideration to the concerns of State and local governments who believe that extended deferrals of the effective date or withdrawal of the 80 dB standard would deprive their citizens of the protection they had anticipated through their adoption of complementary regulations which contain the initial 1982, 80 dB Federal standard. Based on projected new truck sales and the low turnover rate for the Nation's truck fleet, the Agency believes that the incremental benefits expected to be provided by the 80 dB standard during its first three years, while not insignificant, are sufficiently small so that a short delay of these initial benefits would not deprive the public of anticipated long-term health and welfare benefits.

In reassessing the 80 dB standard, the Administrator has also given consideration to the fact that the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978, is currently undergoing revision by the Congress. Consequently, the future of the Federal noise regulatory program and the medium and heavy truck noise emission regulation, in particular, is uncertain.

III. Conclusion

The Administrator has concluded that the one-year deferral of the 80 dB medium and heavy truck noise emission standard that was issued on January 19, 1981 will not provide adequate time to the truck industry to effect a reasonable level of economic recovery, or to integrate, in a cost-effective manner, further noise reduction requirements with new air emission and fuel economy designs and engineering. Therefore, the Administrator is deferring, for an

additional three years, the effective date of this standard, from January 1, 1983 to January 1, 1986.

Based on comments and information received by the Agency, and the length of this deferral, the Administrator believes it unnecessary to decide at this time whether the 80 dB noise emission standard should be withdrawn.

This action is expected to save truck manufacturers up to \$10 million in interest charges or opportunity costs as a result of deferring inventory and capital equipment investments of approximately \$40 million. This deferral should also result in an improved near-term cash flow position for manufacturers.

For truck users, EPA estimates a potential near-term savings of approximately \$374 million since users will not incur the increased purchase price and operating costs associated with the 80 dB standard for an additional three years.

In summary, this additional three-year deferral is expected to produce several near-term effects: Ensure that the trucking industry and the public will not incur noise regulatory costs that may become unnecessary as a result of Congressional revisions to the Act; provide cash-flow relief and a significant cost savings to both truck manufacturers and purchasers as a result of deferred investments and avoided increased costs; provide the industry with time to align, and thus economize, the design requirements attendant to the 80 dB noise standard, Federal air emissions requirements anticipated in the 1988 timeframe, and customer demands for improved fuel economy; and introduce a small loss of anticipated near-term health and welfare benefits due to the delayed entry of vehicles quieted below the current 83 dB Federal standard, into the fleet.

Because the 76 dB noise emission standard for truck-mounted solid waste compactors is dependent, in large part, on the availability of truck chassis that meet the 80 dB standard, the Agency is also deferring, for an additional three years, the effective date of the compactor standard from July 1, 1983 to July 1, 1986.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This deferral of the effective date for the 80 dB standard is intended to provide regulatory relief. Consequently, it is not judged "major" because:

(1) The deferral will not have an annual adverse effect on the economy of \$100 million or more;

(2) It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) It will not cause significant adverse effects 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.

The amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291 and received its concurrence on September 14, 1981.

Under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. These amendments are intended to ease manufacturer compliance with the noise emission standards for the affected products and thus should reduce any adverse economic effects on these industries.

These amendments are issued under the authority of Section 6 of the Noise Control Act, 42 U.S.C. 4905.

Dated: February 6, 1982.
Anne M. Gorsuch,
Administrator.

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

For the reasons set forth in the Preamble, the noise emission standards for medium and heavy trucks and truck-mounted solid waste compactors are amended as follows:

§ 205.52 (Amended)

1. 40 CFR Part 205, Subpart B, is amended by removing the word "1983" and inserting in its place, the word "1986" in § 205.52(a).

§ 205.202 (Amended)

2. 40 CFR Part 205, Subpart F, is amended by removing the word "1983" and inserting in its place, the word "1986" in § 205.202(a).

(Sec. 6, Pub. L. 92-574, 80 Stat. 1237 (42 U.S.C. 4905))

(FR Doc. 82-4123 Filed 2-16-82 9:46 am)

BILLING CODE 4910-70-04

Public Law 97-101
97th Congress

An Act

Making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1982, and for other purposes.

Dec. 23, 1981
[H.R. 4034]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1982, and for other purposes, namely:

Department of
Housing and
Urban
Development—
Independent
Agencies
Appropriation
Act, 1982.

TITLE I

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING PROGRAMS

ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING

The amount of contracts for annual contributions, not otherwise provided for, as authorized by section 5 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437c), and heretofore approved in annual appropriation Acts, is increased by \$916,233,800 of which \$25,112,000 shall be for assistance in financing the development or acquisition cost of low-income housing for Indian families as authorized by section 5(c) of the aforementioned Act and of which \$75,000,000 shall be for the modernization of existing low-income housing projects: *Provided*, That budget authority obligated under such contracts shall be increased above amounts heretofore provided in annual appropriation Acts by \$17,939,370,000: *Provided further*, That of the budget authority provided herein, \$2,354,400,000 shall be allocated for public housing new construction other than for low-income housing for Indian families: *Provided further*, That any balances of authorities remaining at the end of fiscal year 1981 shall be added to and merged with the authority provided herein and made subject only to terms and conditions of law applicable to authorizations becoming available in fiscal year 1982, except that \$15,000,000 of contract authority for modernization of existing low-income housing projects and \$300,000,000 of budget authority which were deferred from obligation in the Supplemental Appropriations and Rescission Act, 1981, Public Law 97-12, shall be available after September 30, 1981, in accordance with the Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1981, Public Law 96-526.

Ante, p. 14.

94 Stat. 3044.

CONSUMER PRODUCT SAFETY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Consumer Product Safety Commission, including rent in the District of Columbia, hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18, and not to exceed \$500 for official reception and representation expenses, \$32,983,000: *Provided*, That funds provided by this appropriation for laboratories shall be available only for the acquisition or conversion of existing laboratories.

DEPARTMENT OF DEFENSE--CIVIL CEMETERY EXPENSES, ARMY

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' Home National Cemetery, including the purchase of two passenger motor vehicles for replacement only, \$5,086,000, to remain available until expended: *Provided*, That reimbursement shall be made to the applicable military appropriation for the pay and allowances of any military personnel performing services primarily for the purposes of this appropriation.

ENVIRONMENTAL PROTECTION AGENCY

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, including hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; and not to exceed \$3,000 for official reception and representation expenses; \$583,747,000: *Provided*, That none of these funds may be expended for purposes of Resource Conservation and Recovery Panels established under section 2003 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6913).

RESEARCH AND DEVELOPMENT

For research and development activities, \$181,250,700, to remain available until September 30, 1983.

ABATEMENT, CONTROL AND COMPLIANCE

For abatement, control and compliance activities, \$421,840,500, to remain available until September 30, 1983: *Provided*, That none of these funds may be expended for purposes of Resource Conservation and Recovery Panels established under section 2003 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6913) or for support to State, regional, local and interstate agencies in accordance with subtitle D of the Solid Waste Disposal Act, as amended, other than section 4008(a)(2) or 4009.

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment of facilities of or used by the Environmental Protection Agency, \$4,115,000, to remain available until expended.

PAYMENT TO THE HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

42 USC 9601
note.

For payment to the Hazardous Substance Response Trust Fund as authorized by Public Law 96-510, \$23,000,000.

HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

42 USC 9611.

For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, including sections 111 (c)(3), (c)(5), (c)(6), and (c)(4), \$200,000,000, to be derived from the Hazardous Substance Response Trust Fund, to remain available until expended: *Provided*, That not to exceed \$41,640,000 shall be available for administrative expenses. Funds appropriated under this account may be allocated to other Federal agencies in accordance with section 111(a) of Public Law 96-510.

CONSTRUCTION GRANTS

33 USC 1283.

For liquidation of obligations incurred pursuant to authority contained in section 203 of the Federal Water Pollution Control Act, as amended, \$1,000,000,000, to remain available until expended.

EXECUTIVE OFFICE OF THE PRESIDENT

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

42 USC 4321
note.
42 USC 4371
note, 5 USC app.

For necessary expenses of the Council on Environmental Quality and the Office of Environmental Quality, in carrying out their functions under the National Environmental Policy Act of 1969 (Public Law 91-190), the Environmental Quality Improvement Act of 1970 (Public Law 91-224), and Reorganization Plan No. 1 of 1977, including not to exceed \$500 for official reception and representation expenses, and hire of passenger motor vehicles, \$1,044,000.

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

For necessary expenses of the Office of Science and Technology Policy, in carrying out the purposes of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 and 6671), hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, not to exceed \$1,500 for official reception and representation expenses, and rental of conference rooms in the District of Columbia, \$1,793,000.

Public Law 97-272
97th Congress

An Act

Sept. 30, 1982
[H.R. 6956]

Making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1983, and for other purposes.

Department of
Housing and
Urban
Development-
Independent
Agencies
Appropriation
Act, 1983.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1983, and for other purposes, namely:

TITLE I

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING PROGRAMS

HOUSING PAYMENTS

For the payment of annual contributions, not otherwise provided for, in accordance with section 5 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437c); for payments authorized by title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749 et seq.); for rent supplement payments authorized by section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. 1701a); and for payments as authorized by sections 235 and 236 of the National Housing Act, as amended (12 U.S.C. 1715a, 1715a-1), \$9,538,000,000.

HOUSING FOR THE ELDERLY OR HANDICAPPED FUND

In 1983, \$453,000,000 of direct loan obligations may be made under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q), utilizing the resources of the fund authorized by subsection (a)(4) of such section, in accordance with paragraph (C) of such subsection: *Provided*, That such commitments shall be available only to qualified nonprofit sponsors for the purpose of providing 100 per centum loans for the development of housing for the elderly or handicapped, with any cash equity or other financial commitments imposed as a condition of loan approval to be returned to the sponsor if sustaining occupancy is achieved in a reasonable period of time: *Provided further*, That the full amount shall be available for permanent financing (including construction financing) for housing projects for the elderly or handicapped: *Provided further*, That the Secretary may borrow from the Secretary of the Treasury in such amounts as are necessary to provide the loans authorized herein: *Provided further*, That, notwithstanding any other provision of law, the

land or interest in land in foreign countries; purchases and repair of uniforms for caretakers of national cemeteries and monuments outside of the United States and its territories and possessions; rent of office and garage space in foreign countries; purchase (one for replacement only) and hire of passenger motor vehicles; and insurance of official motor vehicles in foreign countries when required by law of such countries; \$10,669,000: *Provided*, That where station allowance has been authorized by the Department of the Army for officers of the Army serving the Army at certain foreign stations, the same allowance shall be authorized for officers of the Armed Forces assigned to the Commission while serving at the same foreign stations, and this appropriation is hereby made available for the payment of such allowance: *Provided further*, That when traveling on business of the Commission, officers of the Armed Forces serving as members or as secretary of the Commission may be reimbursed for expenses as provided for civilian members of the Commission: *Provided further*, That the Commission shall reimburse other Government agencies, including the Armed Forces, for salary, pay, and allowances of personnel assigned to it.

36 USC 121b.

36 USC 122.

36 USC 122a.

CONSUMER PRODUCT SAFETY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Consumer Product Safety Commission, including rent in the District of Columbia, hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18, and not to exceed \$500 for official reception and representation expenses, \$33,508,000: *Provided*, That funds provided by this appropriation for laboratories shall be available only for the acquisition or conversion of existing laboratories.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' Home National Cemetery, including the purchase of two passenger motor vehicles for replacement only, \$6,682,000, to remain available until expended: *Provided*, That reimbursement shall be made to the applicable military appropriation for the pay and allowances of any military personnel performing services primarily for the purposes of this appropriation.

ENVIRONMENTAL PROTECTION AGENCY

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, including hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for

GS-18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; and not to exceed \$3,000 for official reception and representation expenses; \$548,613,200: *Provided*, That none of these funds may be expended for purposes of Resource Conservation and Recovery Panels established under section 2003 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6913).

RESEARCH AND DEVELOPMENT

For research and development activities, \$119,000,000, to remain available until September 30, 1984.

ABATEMENT, CONTROL AND COMPLIANCE

For abatement, control and compliance activities, \$369,075,000, to remain available until September 30, 1984: *Provided*, That none of these funds may be expended for purposes of Resource Conservation and Recovery Panels established under section 2003 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6913) or for support to State, regional, local and interstate agencies in accordance with subtitle D of the Solid Waste Disposal Act, as amended, other than section 4008(a)(2) or 4009: *Provided further*, That notwithstanding any other provision of law, Inverness, Mississippi shall be reimbursed for the costs incurred for the construction of a hydrological control release lagoon.

42 USC 6941.
42 USC 6948,
6949.

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment for facilities of, or used by, the Environmental Protection Agency, \$3,000,000, to remain available until expended.

PAYMENT TO THE HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

For payment to the Hazardous Substance Response Trust Fund as authorized by Public Law 96-510, \$40,000,000.

94 Stat. 2801.
42 USC 9631.

HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, including sections 111 (c)(3), (c)(5), (c)(6), and (e)(4), \$210,000,000, to be derived from the Hazardous Substance Response Trust Fund, to remain available until expended: *Provided*, That not to exceed \$37,380,000 shall be available for administrative expenses. Funds appropriated under this account may be allocated to other Federal agencies in accordance with section 111(a) of Public Law 96-510: *Provided further*, That of the funds appropriated under this head, \$8,000,000 shall be made available to the Department of Health and Human Services, upon enactment, and up to an additional \$2,000,000 may be made available by the Administrator to the Department for the performance of specific activities in accordance with section 111(c)(4) of Public Law 96-510, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980: *Provided further*, That management of all funds made available to

94 Stat. 2767.
42 USC 9601
note.
94 Stat. 2788.
42 USC 9611.

the Department shall be consistent with the responsibilities of the Trustee of the Fund, as outlined in section 223(b) of the Act: *Provided further*, That the administrative expenses contained in the first proviso are increased by \$4,708,000: *Provided further*, That for purposes of carrying out section 3012 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6933), as added by Public Law 96-482, \$10,000,000, from the funds provided under this head, to remain available until September 30, 1984.

94 Stat. 2302.
42 USC 9633.

94 Stat. 2342.

CONSTRUCTION GRANTS

For necessary expenses to carry out title II of the Federal Water Pollution Control Act, as amended, including sections 201(n)(2) and 201(m)(3), other than sections 206, 208, and 209, \$2,430,000,000, to remain available until expended.

33 USC 1281.
33 USC 1291,
1286, 1288, 1289.

ADMINISTRATIVE PROVISION

With funds appropriated by this Act the Administrator shall cancel, deny, or take any other necessary action to cancel or deny, the registration of any pesticide product containing toxaphene: *Provided*, That none of the funds appropriated by this Act shall be used for the purpose of granting any registration of any pesticide product containing toxaphene, or for the purpose of approving any amendment to such a registration which would allow the use of such a product: *Provided further*, That this provision shall not apply to the use of toxaphene for the treatment of nondairy cattle scabies by topical application on an individual basis, as approved by the Animal and Plant Health Inspection Service of the United States Department of Agriculture, until existing stocks are depleted or for a period of three years after enactment of this Act, whichever comes first: *Provided further*, That the foregoing provisos shall only take effect if the Environmental Protection Agency fails to promulgate a notice of intent to cancel or restrict registration of toxaphene within sixty days after enactment of this Act.

EXECUTIVE OFFICE OF THE PRESIDENT

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For necessary expenses of the Council on Environmental Quality and the Office of Environmental Quality, in carrying out their functions under the National Environmental Policy Act of 1969 (Public Law 91-190), the Environmental Quality Improvement Act of 1970 (Public Law 91-224), and Reorganization Plan No. 1 of 1977, including not to exceed \$500 for official reception and representation expenses, and hire of passenger motor vehicles, \$926,000.

42 USC 4321
note.
42 USC 4371
note.
5 USC app.

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

For necessary expenses of the Office of Science and Technology Policy, in carrying out the purposes of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 and 6671), hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, not to exceed \$1,500 for official recep-

Public Law 98-45
98th Congress

An Act

Making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1984, and for other purposes.

July 12, 1983
(H.R. 3133)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1984, and for other purposes, namely:

Department of
Housing and
Urban
Development—
Independent
Agencies
Appropriation
Act, 1984.

TITLE I

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING PROGRAMS

ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING

The amount of contracts for annual contributions, not otherwise provided for, as authorized by section 5 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437c), and heretofore approved in appropriation Acts, is increased by \$636,386,000: *Provided*, That the budget authority obligated under such contracts shall be increased above amounts heretofore provided in appropriation Acts by \$9,912,928,000: *Provided further*, That of the budget authority provided herein, \$389,550,000 shall be for assistance in financing the development or acquisition cost of public housing for Indian families, \$1,550,000,000 shall be for the modernization of existing public housing projects pursuant to section 14 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437d), of which \$35,000,000 shall be for the modernization of 1,000 vacant uninhabitable public housing units, pursuant to section 14 of the United States Housing Act of 1937, as amended, other than section 14(f) of such Act, and, \$1,500,000,000 shall be deferred and shall not become available until January 1, 1984: *Provided further*, That the first \$1,926,400,000 of budget authority recaptured and becoming available for obligation in fiscal year 1984 shall only be made available for assistance to projects developed for the elderly or handicapped under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q): *Provided further*, That any balances of authorities made available prior to the enactment of this Act which are or become available for obligation in fiscal year 1984, shall be added to and merged with the authority approved herein, and such merged amounts shall be made subject only to terms and conditions of law applicable to authorizations becoming available in fiscal year 1984: *Provided further*, That none of the merged amounts available for obligation in 1984 shall be subject to the provisions of section 5(c) (2) and (3) and the fourth

42 USC 1437f.

CONSUMER PRODUCT SAFETY COMMISSION

~~SALARIES AND EXPENSES~~

~~For necessary expenses of the Consumer Product Safety Commission, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18, and not to exceed \$500 for official reception and representation expenses, \$85,000,000: *Provided*, That funds provided by this appropriation for laboratories shall be available only for the acquisition or conversion of existing laboratories.~~

~~DEPARTMENT OF DEFENSE--CIVIL~~~~CEREMONIAL EXPENSES, ARMY~~~~SALARIES AND EXPENSES~~

~~For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' Home National Cemetery, including the purchase of one passenger motor vehicle for replacement only, \$8,208,000, to remain available until expended: *Provided*, That reimbursement shall be made to the applicable military appropriation for the pay and allowances of any military personnel performing services primarily for the purposes of this appropriation.~~

ENVIRONMENTAL PROTECTION AGENCY

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, including hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; and not to exceed \$3,000 for official reception and representation expenses: \$574,900,000: *Provided*, That none of these funds may be expended for purposes of Resource Conservation and Recovery Panels established under section 2008 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6913).

RESEARCH AND DEVELOPMENT

For research and development activities, \$142,700,000, to remain available until September 30, 1985.

ABATEMENT, CONTROL, AND COMPLIANCE

For abatement, control, and compliance activities, \$393,900,000, to remain available until September 30, 1985: *Provided*, That none of these funds may be expended for purposes of Resource Conservation and Recovery Panels established under section 2008 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6913), or for

42 USC 6941.
42 USC 6943,
6949.
42 USC 7401
note.

support to State, regional, local and interstate agencies in accordance with subtitle D of the Solid Waste Disposal Act, as amended, other than section 4006(a)(2) or 4009.

None of the funds provided in this Act may be obligated or expended to impose sanctions under the Clean Air Act with respect to any area for failure to attain any national ambient air quality standard established under section 109 of such Act (42 U.S.C. 7409) by the applicable dates set forth in section 172(a) of such Act (42 U.S.C. 7502(a)).

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment for facilities of, or use by, the Environmental Protection Agency, \$2,600,000, to remain available until expended.

PAYMENT TO THE HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

For payment to the Hazardous Substance Response Trust Fund as authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), \$44,000,000.

HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

42 USC 9601
note.

For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, including sections 111 (c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), \$410,000,000, to be derived from the Hazardous Substance Response Trust Fund, to remain available until expended: *Provided*, That not to exceed \$64,000,000 shall be available for administrative expenses. Funds appropriated under this account may be allocated to other Federal agencies in accordance with section 111(a) of Public Law 96-510: *Provided further*, That for performance of specific activities in accordance with section 104(i) of Public Law 96-510, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, \$5,000,000 shall be made available to the Department of Health and Human Services on October 1, 1983, to be derived by transfer from the Hazardous Substance Response Trust Fund.

42 USC 9611.

42 USC 9604.

CONSTRUCTION GRANTS

33 USC 1281.
33 USC 1281,
1286, 1288, 1289.

For necessary expenses to carry out title II of the Federal Water Pollution Control Act, as amended, other than sections 201(m) (1)-(3), 201(n)(2), 206, 208, and 209, \$2,400,000,000, to remain available until expended, and for projects under section 201(n)(2), subject to the approval of the Committees on Appropriations, \$80,000,000, to remain available until expended.

EXECUTIVE OFFICE OF THE PRESIDENT

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For necessary expenses of the Council on Environmental Quality and the Office of Environmental Quality, in carrying out their functions under the National Environmental Policy Act of 1969

Attachment 6

PRINCIPLES OF
FEDERAL APPROPRIATIONS
LAW

FIRST EDITION

JUNE 1982

UNITED STATES GENERAL ACCOUNTING OFFICE
OFFICE OF GENERAL COUNSEL

F. STATUTORY INTERPRETATION: DETERMINING CONGRESSIONAL INTENT

The complexity of the appropriations process necessarily means that questions arise concerning the interpretation of certain statutory provisions. In order to resolve such questions, it is often necessary to decide which provision controls, or what the Congress intended when the authorization or appropriation was enacted. This section will outline some of the principal issues of statutory construction as they occur in appropriations law. This section is essentially limited to principles which are not covered elsewhere in the Manual.

(1) What Constitutes An Appropriation

The starting point is 31 U.S.C. § 627, which provides:

"No Act of Congress passed after June 30, 1906, shall be construed to make an appropriation out of the Treasury of the United States, or to authorize the execution of a contract involving the payment of money in excess of appropriations made by law, unless such Act shall in specific terms declare an appropriation to be made or that a contract may be executed."

Thus, the rule is that the making of an appropriation must be expressly stated. An appropriation cannot be inferred or made by implication. E.g., 50 Comp. Gen. 863 (1971).

Regular annual and supplemental appropriation acts present no problems in this respect as they will be apparent on their face. They, as required by 1 U.S.C. § 105, bear the title "An Act making appropriations * * *." However, there are situations in which statutes other than regular appropriation acts may be construed as making appropriations.

Under the above rule, it is not necessary that the statute actually use the word "appropriation." If the statute contains a specific direction to pay and a designation of the funds to be used, such as a direction to make a specified payment or class of payments "out of any money in the Treasury not otherwise appropriated," then this amounts to an appropriation. 13 Comp. Gen. 77 (1933).

For example, a private relief act which directs the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, a specified sum of money to a named individual constitutes an appropriation. 23 Comp. Dec. 167, 170 (1916); 6 Comp. Dec. 514, 516 (1899). However,

it authorizes payment only to the individual named, and the Comptroller General has held that it does not authorize reimbursement to an agency where the agency erroneously paid the individual before the private act had been passed. In this situation, the purpose for which the appropriation was made had ceased to exist. B-151114, August 26, 1964. A private relief act which contains merely an authorization and direction to pay but no designation of the funds to be used does not make an appropriation. 21 Comp. Dec. 867 (1915); B-26414, January 7, 1944; unpublished decision of April 16, 1915, 73 MS Comp. Dec. 195. (Similar language in private relief legislation had been viewed as constituting an appropriation prior to the enactment of 31 U.S.C. § 627. See 4 Comp. Dec. 325, 327 (1897); 6 Comp. Dec. 514, 516 (1899).)

A 1978 decision concerned section 11 of the Federal Fire Prevention and Control Act of 1974, which authorizes the Secretary of the Treasury to reimburse local fire departments or districts for costs incurred in fighting fires on Federal property. Since the statute directed the Secretary to make payments "from any moneys in the Treasury not otherwise appropriated" (i.e., it contained both the specific direction to pay and a designation of the funds to be used), the Comptroller General concluded that section 11 constituted a permanent indefinite appropriation. B-160998, April 13, 1978.

Legislation enacted in 1978 authorized the U.S. Treasury to make an annual prepayment to Guam and the Virgin Islands of the amount estimated to be collected over the course of the year for certain taxes, duties, and fees. While it was apparent that the prepayment at least for the first year would have to come from the general fund of the Treasury, the legislation was silent as to the source of the funds for the prepayments, both for the first year and for subsequent years. It was concluded that, while the statute may have established a permanent authorization, it was not sufficient under 31 U.S.C. § 627 to constitute an actual appropriation. B-114808, August 7, 1979. (Congress subsequently made the necessary appropriation. Pub. L. No. 96-126, November 27, 1979, 93 Stat. 954, 966.)

Statutes which authorize the collection of fees and their deposit into a particular fund, and which make the fund available for expenditure for a specified purpose, have been viewed as constituting continuing or permanent appropriations; that is, the money is available for obligation or expenditure without further action by the Congress. This principle has been applied to revolving funds, 35 Comp. Gen. 615 (1956) and 35 Comp. Gen. 436 (1956); a special deposit account, 50 Comp.

Gen. 323 (1970); the Department of Defense commissary surcharge fund, 57 Comp. Gen. 311 (1978); the Federal Prison Industries Fund established by 18 U.S.C. § 4126, 60 Comp. Gen. 323 (1981); and, to a limited extent, the National Defense Stockpile Transaction Fund, B-197118, January 14, 1980, and B-199216, July 21, 1980. These cases are essentially an outgrowth of a much earlier decision, 13 Comp. Dec. 219 (1906), which held that 31 U.S.C. § 627 refers to the general fund of the Treasury, not to money required to be deposited in the Treasury as a "special fund."

The "special fund" line of decisions was also applied with respect to mobile home inspection fees collected by the Secretary of Housing and Urban Development even though the statute involved did not expressly direct the establishment of a special fund, since it was apparent that such a fund was a necessary implementation procedure and the expenditure of the collections (to defray the cost of the inspection program) did not involve the payment of monies out of the general fund of the Treasury. 59 Comp. Gen. 215 (1980).

The question of whether a particular statute constitutes an appropriation is important for several reasons. First, as noted, it determines whether particular funds--which do not necessarily have to come from the Treasury--are available for obligation or expenditure without further congressional action. The determination is also important because many statutory restrictions apply only to "appropriated funds." Thus, funds which the Congress makes available for expenditure by Government corporations are considered "appropriated funds" even where they are derived from a source other than the Treasury. Under this concept, user fee toll charges collected by the Saint Lawrence Seaway Development Corporation were held to be appropriated funds in B-193573, January 8, 1979. This decision was modified and affirmed in B-193573, December 19, 1979, which noted that the capitalization of a Government corporation, whether a lump-sum appropriation in the form of capital stock or the authority to borrow through the issuance of long term bonds to the United States Treasury, consists of "appropriated funds." The decision states:

"[A]ny time the Congress specifies the manner in which a Federal entity shall be funded and makes such funds available for obligation or expenditure, that constitutes an appropriation, whether the language is found in an appropriation act or in other legislation."

However, the decision went on to point out that, even though the funds were "appropriated funds" under the broad definition in 31 U.S.C. § 2 (Section A, this Chapter), many of the restrictions on the use of appropriated funds would not be applicable by virtue of the Corporation's organic legislation and its status as a corporation. (See Chapter 15, this Manual.)

(2) Effect of Budget Estimates

(a) "Lump-Sum" vs. "Line Item"

Years ago, it was the common practice of Congress to write appropriation acts quite specifically by breaking down particular spending objects into a number of separate "line item" appropriations. Under this approach, each line item would be legally available only for the specific object described. The trend in recent years has favored the enactment of "lump-sum" appropriations, which are stated in terms of broad object categories such as "salaries and expenses," "operations and maintenance," or "research and development."

(b) Budget Justifications

In supporting requests for lump-sum appropriations, agencies still present to the Appropriations Committees detailed justifications which explain how they propose to use the appropriation. For example, an agency seeking a \$10 million lump-sum appropriation for research and development might identify ten \$1 million projects to be funded.

Where an amount to be expended for a specific purpose is included in a budget estimate, and that amount is subsequently appropriated by the Congress, the appropriation is legally available for the expenditure even though the appropriation act does not make specific reference to it. 23 Comp. Dec. 547 (1917); 26 Comp. Gen. 545 (1947); 28 Comp. Gen. 296, 298 (1948); 35 Comp. Gen. 306, 308 (1955); A-22070, March 30, 1928; B-27425, August 7, 1942; B-51630, September 11, 1945; B-125404, September 16, 1955. However, the inclusion of an item in departmental budget estimates for an expenditure which is otherwise prohibited by law, and the subsequent appropriation of funds without specific reference to the item, do not constitute authority for the proposed expenditure or make the appropriation available for that purpose. 26 Comp. Gen. 545, supra; 6 Comp. Gen. 573 (1927); see also 18 Comp. Gen. 533 (1938).

Budget estimates are not legally binding on an agency unless carried into (either specified in or incorporated by reference) the appropriation act itself. Thus, an agency operating under a lump-sum appropriation may exceed the budget estimate for any given item as long as it does not exceed the lump-sum appropriation or violate any other provision of law. 17 Comp. Gen. 147 (1937); B-118357, February 17, 1954; B-149163, June 27, 1962; see also 39 Comp. Gen. 784 (1960).

This construction provides agencies with some flexibility when unforeseen developments, such as changes in requirements or changing conditions, occur.

Despite the fact that agencies are not required to adhere to budget estimates, there are practical constraints to be considered. As the House Appropriations Committee pointed out in its report on the 1974 Defense Department appropriation bill:

"In a strictly legal sense, the Department of Defense could utilize the funds appropriated for whatever programs were included under the individual appropriation accounts, but the relationship with the Congress demands that the detailed justifications which are presented in support of budget requests be followed. To do otherwise would cause Congress to lose confidence in the requests made and probably result in reduced appropriations or line item appropriation bills." H.R. Rep. No. 93-662, 93d Cong. 1st. Sess. 16 (1973).

One means of accommodating the agencies' desire for flexibility and the congressional interest in control has been the development of "reprogramming" procedures (see below).

(3) Reprogramming and Transfer

Reprogramming must be distinguished from the related concept of transfer. Reprogramming is the utilization of funds in an appropriation account for purposes other than those contemplated at the time of appropriation; in other words, the shifting of funds from one object to another within an appropriation. Transfer is the shifting of funds between appropriations. Thus, if an agency receives a lump-sum appropriation for Operations and Maintenance and another for Capital Expenditures, a shifting of funds from Operations and Maintenance to Capital Expenditures is a transfer, while a shifting of funds from one project to another within the Capital Expenditures account is reprogramming.

Transfer is prohibited without statutory authority. See, e.g., 17 Comp. Dec. 7 (1910); 33 Comp. Gen. 216 (1953); 33 Comp. Gen. 214 (1953); B-178205, April 13, 1976. This rule follows from the requirements of 31 U.S.C. § 628, which prohibits the use of appropriations for other than their intended purpose (Chapter 3, this Manual), and 31 U.S.C. § 665, the Antideficiency Act, which prohibits obligations or expenditures in excess of or in advance of appropriations (Chapter 5, this Manual). The prohibition against transfer is now codified in 31 U.S.C. § 628-1. An agency's erroneous characterization of a proposed transfer as a "reprogramming" is irrelevant. See B-202362, March 24, 1981.

Some agencies have limited transfer authority. Such authority will commonly set a percentage limit on the amount that may be transferred from a given appropriation and/or the amount by which the receiving appropriation may be augmented. A transfer pursuant to such authority is, of course, entirely proper. B-167637, October 11, 1973. In B-151157, June 27, 1963, the Comptroller General concluded that the use of statutory transfer authority was not precluded by the fact that the amount of the "receiving appropriation" had been reduced from the budget request by the legislative committees.

The prohibition against transfer without statutory authority applies equally to transfers between agencies. 17 Comp. Dec. 174 (1910); 4 Comp. Gen. 848 (1925); 7 Comp. Gen. 524 (1928). See also 26 Comp. Gen. 545 (1947); 31 Comp. Gen. 109 (1951). The major source of interagency fund transfers today is the Economy Act (see Chapter 8, section entitled "Interagency Services").

Reprogramming is usually a non-statutory arrangement. This means that there is no general statutory provision either authorizing or prohibiting it, and it has evolved largely in the form of informal (i.e., non-statutory) agreements between various agencies and their congressional oversight committees. Thus, as a matter of law, an agency is free to reprogram unobligated funds as long as the expenditures are within the general purpose of the appropriation and are not in violation of any other specific limitation or otherwise prohibited. E.g., B-123469, May 9, 1955. This is true even though the agency may already have administratively allotted the funds to a particular object. 20 Comp. Gen. 631 (1941). Reprogramming policies, procedures, and practices vary considerably among Federal agencies. There are at present no general reprogramming guidelines applicable to all agencies.

In some cases, Congress has attempted to regulate reprogramming by statute, and of course any applicable statutory provisions must be followed. For example, a provision frequently found in Defense Department appropriation acts prohibits the use of funds to prepare or present a reprogramming request to the Appropriations Committees "where the item for which reprogramming is requested has been denied by the Congress." The Comptroller General has construed this provision as prohibiting a reprogramming request which would have the effect of restoring funds which had been specifically deleted in the legislative process; that is, the provision is not limited to the denial of an entire project. See "Legality of the Navy's Expenditures for Project Sanguine During Fiscal Year 1974," LCD-75-315, January 20, 1975. Absent such a statutory provision, a reprogramming which has the effect of restoring funds deleted in the legislative process, which had been approved by both the appropriations and the legislative committees, has been held not legally objectionable. B-195269, October 15, 1979.

Reprogramming frequently involves some form of notification to, and in some instances the affirmative approval by, the appropriations and/or legislative committees. In a few cases, the notification and/or approval process is prescribed by statute. However, in most cases, the committee review process is non-statutory, and derives from instructions in committee reports, hearings, or other correspondence. In this context, it provides an element of congressional control over spending flexibility short of resort to the full legislative process. Absent a statutory basis, requirements imposed by committees for approval of reprogrammings are not legally binding upon the agencies. B-174702, July 24, 1974. Compliance with such non-statutory requirements is largely a matter of "keeping faith" with the pertinent committees.

Some agencies, such as the Defense Department, have detailed regulations on reprogramming. In 56 Comp. Gen. 201 (1978), failure by the Navy to complete a form required by Defense Department reprogramming regulations was held not sufficient to support a claim for proposal preparation costs by an unsuccessful bidder upon cancellation of the proposal.

(4) Specific vs. General Appropriations

RULE: An appropriation for a specific object is available for that object to the exclusion of a more general appropriation which might otherwise be considered available for the same object, and the exhaustion of the specific appropriation does not authorize charging any excess payment to the more general appropriation. In other words, if an agency has a specific appropriation for a particular item, and also has a general appropriation broad enough to cover the same item, it does not have an option as to which to use. It must use the specific appropriation.

The cases illustrating this rule are legion. ^{12/} Generally, the fact patterns and the specific statutes involved are of secondary importance. The point is that the agency does not have an option. If a specific appropriation exists for a particular item, then that appropriation must be used and it is improper to charge the more general appropriation or to use it as a "back-up." A few cases are summarized as examples:

- (a) A State Department appropriation for "publication of consular and commercial reports" could not be used to purchase books in view of a specific appropriation for "books and maps." 1 Comp. Dec. 126 (1894). The Comptroller of the Treasury referred to the rule as having been well-established "from time immemorial." Id. at 127.
- (b) The existence of a specific appropriation for the expenses of repairing the United States courthouse and jail in Nome, Alaska, precludes the charging of such expenses to more general appropriations such as "Miscellaneous expenses, U.S. Courts" or "Support of prisoners, U.S. Courts." 4 Comp. Gen. 476 (1924).

^{12/} See, for example: 6 Comp. Dec. 124 (1899); 4 Comp. Gen. 173 (1924), reversed by 4 Comp. Gen. 471 (1924) (based on additional information establishing that the expense was not properly chargeable to the specific appropriation); 5 Comp. Gen. 399 (1925) and cases cited therein; 7 Comp. Gen. 459 (1928); 11 Comp. Gen. 313 (1932); 17 Comp. Gen. 23 (1937); 17 Comp. Gen. 974 (1938); 18 Comp. Gen. 1013 (1939); 19 Comp. Gen. 324 (1939); 23 Comp. Gen. 749 (1944); 24 Comp. Gen. 807 (1945); 36 Comp. Gen. 526 (1957); 38 Comp. Gen. 758, 767 (1959); 46 Comp. Gen. 198 (1966); B-70219, January 19, 1948; B-183922, August 5, 1975; B-202362, March 24, 1981.

- (c) A specific appropriation for the construction of an additional wing on the Navy Department Building could not be supplemented by a more general appropriation to build a larger wing desired because of increased needs. 20 Comp. Gen. 272 (1940).
- (d) Appropriations of the District of Columbia Health Department could not be used to buy penicillin to be used for Civil Defense purposes because the District had received a specific appropriation for "all expenses necessary for the Office of Civil Defense." 31 Comp. Gen. 491 (1952).

Further, the fact that an appropriation for a specific purpose is included in a general appropriation does not deprive it of its character as an appropriation for the particular purpose designated, and where such specific appropriation is available for the expenses necessarily incident to its principal purpose, such incidental expenses may not be charged to the more general appropriation. 20 Comp. Gen. 739 (1941). In the cited decision, a general appropriation for the Geological Survey contained the provision "including not to exceed \$45,000 for the purchase and exchange * * * of * * * passenger-carrying vehicles." It was held that the costs of transportation incident to the delivery of the purchased vehicles were chargeable to the specific \$45,000 appropriation and not to the more general portion of the appropriation.

The rule has also been applied to expenditures by a Government corporation from corporate funds for an object for which the corporation had received a specific appropriation, where the reason for using corporate funds was to avoid a restriction applicable to the specific appropriation. B-142011, June 19, 1969.

Of course, the rule that the specific governs over the general is not peculiar to appropriation law. It is a general principle of statutory construction and applies equally to provisions other than appropriation statutes. E.g., B-152722, August 16, 1965. However, another principle of statutory construction is that two statutes should be construed harmoniously so as to give maximum effect to both wherever possible. In dealing with non-appropriation statutes, the relationship between the two principles has been stated as follows:

"Where there is a seeming conflict between a general provision and a specific provision and the general provision is broad enough to include the subject to which the specific provision relates, the specific provision should be regarded as an exception to the general provision so that both may be given effect, the general applying only where the specific provision is inapplicable."
B-163375, September 2, 1971.

As stated before, however, in the appropriations context, this does not mean that a general appropriation is available when the specific appropriation has been exhausted. Were this the case, agencies could exceed congressionally-established spending limits. With respect to appropriation statutes, the rule set forth at the beginning of this subsection applies.

Two appropriations available for same purpose

RULE: Where either of two appropriations may reasonably be construed as available for expenditures not specifically mentioned under either appropriation, the determination of the agency as to which of the two appropriations to use will not be questioned. However, once the election has been made, the continued use of the appropriation selected to the exclusion of any other for the same purpose is required, in the absence of changes in the appropriation acts. 15 Comp. Dec. 101 (1908); 5 Comp. Gen. 479 (1926); 10 Comp. Gen. 440 (1931); 23 Comp. Gen. 827 (1944).

In 59 Comp. Gen. 518 (1980), the Environmental Protection Agency received separate lump-sum appropriations for "Research and Development" and "Abatement and Control." The contract in question, entered into in 1975, could arguably have been charged to either appropriation, but EPA had elected to charge it to Research and Development. Applying the above rule, the Comptroller General concluded that a 1979 modification to the contract had to be charged to Research and Development funds, and that the Abatement and Control appropriation could not be used.

Thus, in this type of situation (two appropriations, both arguably available, neither of which specifies the object in question), the agency may make an initial election as to which appropriation to use. However, once it has made that election and has in fact used the selected appropriation, it cannot thereafter, because of insufficient funds in the selected appropriation or for other reasons, change its election and use the other appropriation.

(5) General Provisions: When Construed As Permanent Legislation

Appropriation acts, in addition to making appropriations, frequently contain a variety of restrictions on the availability of the appropriations. They come in two forms: (a) "provisos" attached directly to the appropriating language, and (b) general provisions. A general provision may apply solely to the act in which it is contained ("No part of any appropriation contained in this Act shall be used * * *"), or it may have general applicability ("No part of any appropriation contained in this or any other Act shall be used * * *"). Such a restriction is no less effective merely because it is contained in an appropriation act. E.g., United States v. Dickerson, 310 U.S. 554 (1940). General provisions may also be phrased in the form of positive authority rather than restrictions on the use of appropriations.

As noted earlier in this Chapter, rules of both the Senate and the House of Representatives prohibit "legislating" in appropriation acts. However, this merely subjects the provision to a point of order and does not affect the validity of the legislation if the point of order is not raised, or is raised and not sustained. Thus, once a given provision has been enacted, the question of whether it is "general legislation" or merely a restriction on the use of an appropriation, i.e., whether it might have been subject to a point of order, is academic and largely immaterial.

This subsection deals with the question of when general provisions can be construed as permanent legislation.

Since an appropriation act is made for a particular fiscal year, the starting presumption is that everything contained in the act is effective only for the fiscal year covered. Thus, the rule is: A provision contained in an annual appropriation act is not to be construed to be permanent legislation unless the language used therein or the nature of the provision renders it clear that such was the intention of the Congress, but when the word "hereafter" or other words indicating futurity are used or when the provision is of a general character bearing no relation to the object of the appropriation, the provision generally has been construed to be permanent legislation. 7 Comp. Dec. 838 (1901); 5 Comp. Gen. 810 (1926); 10 Comp. Gen. 120 (1930); 24 Comp. Gen. 436 (1944); 32 Comp. Gen. 11 (1952); 36 Comp. Gen. 434 (1956).

It follows that a proviso or general provision that does not contain words of futurity will generally not be construed

as permanent. 3 Comp. Gen. 319 (1923); 5 Comp. Gen. 810 (1925); 10 Comp. Gen. 120 (1930); 20 Comp. Gen. 322 (1940); 27 Comp. Gen. 11 (1952); A-18614, May 25, 1927; Minis v. United States, 40 U.S. (15 Pet) 423 (1841); United States v. Vulte, 233 U.S. 509, 514 (1914); NLRB v. Thompson Products, Inc., 141 F.2d 794, 798 (9th Cir. 1944); City of Hialeah v. United States Housing Authority, 340 F. Supp. 885 (S.D. Fla. 1971).

As noted, the crucial factor is the language of the particular provision, i.e., whether it contains "words of futurity." The most common "word of futurity" is "hereafter" and provisions using this term will usually be construed as permanent. 26 Comp. Gen. 354, 357 (1946); 2 Comp. Gen. 535 (1923); B-108245, March 19, 1952; B-100983, February 8, 1951; B-76782, June 10, 1948.

However, words of futurity other than "hereafter" have been deemed sufficient. Thus, there is no significant difference in meaning between "hereafter" and "after the date of approval of this Act." 36 Comp. Gen. 434 (1956). In 24 Comp. Gen. 436 (1944), the words "at any time" were viewed as words of futurity in a provision which authorized reduced transportation rates to military personnel who were "given furloughs at any time." In that decision, however, the conclusion of permanence was further supported by the fact that Congress appropriated funds to carry out the provision in the following year as well, merely referring to the provision rather than repeating it.

The words "or any other act" in a provision restricting the expenditure of appropriations "contained in this or any other act" were held to be sufficient words of futurity in 26 Comp. Dec. 1066 (1920). However, a later decision viewed the effect of the words "or any other act" as inconclusive. B-37032, October 5, 1943. In Norcross v. United States, 142 Ct. Cl. 763 (1958), a general provision barring the payment of compensation to certain non-citizens which contained the words "this or any other Act" but which was preceded by the words "during the current fiscal year" was held applicable only to the funds of that year. In A-88073, August 19, 1937, a proviso restricting the use of funds provided in "this or any other appropriation" was held not to contain words of futurity and was therefore not permanent legislation. See also 18 Comp. Gen. 37, 38 (1938). More recently, GAO considered a restriction on the use of funds "appropriated in this or any other act" and concluded that the words "or any other act" did not indicate futurity but merely referred to other appropriation acts for the same fiscal year. B-145492,

September 21, 1976. Since the cases are not definitive, it appears that the effect of an appropriation act restriction using the words "this or any other act" cannot be determined solely on the language used. The various other factors discussed below would have to be taken into consideration.

Other factors may also be taken into consideration. Thus, the repeated inclusion of a provision in annual appropriation acts indicates that it is not considered or intended by Congress to be permanent. 10 Comp. Gen. 120 (1930); 32 Comp. Gen. 11 (1952); A-89279, October 26, 1937. However, where adequate words of futurity exist, the repetition of a provision in the following year's appropriation act has been viewed simply as an "excess of caution." 36 Comp. Gen. 434 (1956). This factor is of limited usefulness, since the failure to repeat in subsequent appropriation acts a provision which does not contain words of futurity can also be viewed as an indication that Congress did not consider it to be permanent and simply did not want it to continue. Cf. 18 Comp. Gen. 37 (1938). Thus, if the provision does not contain words of futurity, repetition or non-repetition lead to the same result--that the provision is not permanent. If the provision does contain words of futurity, non-repetition indicates permanence but repetition, although it suggests non-permanence, is inconclusive.

The inclusion of a provision in the United States Code is relevant as an indication of permanence but is not controlling. 36 Comp. Gen. 434 (1956); 24 Comp. Gen. 436 (1944). Failure to include a provision in the Code would appear to be of no significance.

Legislative history is also relevant, but has been used for the most part to support a conclusion based on the presence or absence of words of futurity. See B-108245, March 19, 1952; B-57539, May 3, 1946; NLRB v. Thompson Products, Inc., supra. In B-192973, October 11, 1978, a general provision requiring the submission of a report "annually to the Congress" was held not permanent in view of conflicting expressions of congressional intent.

The degree of relationship between a given provision and the object of the appropriation act in which it appears or the appropriating language to which it is appended is a factor to be considered. If the provision bears no direct relationship to the appropriation act in which it appears, this is an indication of permanence. The closer the relationship, the less likely it is that the provision will be viewed as permanent. See 26 Comp. Gen. 354, 357 (1946); 32 Comp. Gen. 11 (1952); B-37032, October 5, 1943; A-88073, August 19, 1937.

Finally, the phrasing of a provision as positive authorization rather than a restriction on the use of an appropriation is an indication of permanence, but usually has been considered in conjunction with a finding of adequate words of futurity. 24 Comp. Gen. 436 (1944); 36 Comp. Gen. 434 (1956). A provision was held permanent in 9 Comp. Gen. 248 (1929) although it contained no words of futurity because it was to become effective on the last day of the fiscal year and an alternative construction would have rendered it effective for only one day, clearly not the legislative intent. An early decision, 17 Comp. Dec. 146 (1910), held a proviso to be permanent based solely on the fact that it was not phrased as a restriction on the use of the appropriation to which it was attached, but this decision seems inconsistent with the weight of authority and certainly with the Supreme Court's decision in Minis v. United States, supra.

In sum, the additional factors mentioned above are all relevant as indicia of whether a given provision should be construed as permanent. However, the presence or absence of words of futurity remains the crucial factor, and the additional factors have been used for the most part to support a conclusion based primarily on this presence or absence.

(6) Appropriation Acts vs. Authorization Acts

This subsection deals with problems in the relationship of appropriation acts to authorization acts. The problem usually arises in the form of a real or perceived inconsistency between the two statutes. The solution, in general terms, lies primarily in the application of two principles of statutory construction:

--Statutes should be construed harmoniously so as to give maximum effect to both wherever possible.

--In cases of conflict, the latest expression of Congress governs.

As a general proposition, appropriations made to carry out authorizing laws "are made on the basis that the authorization acts in effect constitute an adjudication or legislative determination of the subject matter." B-151157, June 27, 1963. Thus, appropriations to carry out enabling or authorizing laws must be expended in strict accord with the original authorization both as to the amount of funds to be expended and the nature of the work authorized. 36 Comp. Gen. 240, 242 (1956); B-125404, August 31, 1956; B-151157, supra. A few examples of this relationship follow.

--In B-125404, supra, it was held that an appropriation to construct a bridge across the Potomac River pursuant to a statute authorizing construction of the bridge and prescribing its location was not available to construct the bridge at a slightly different location even though the planners favored the alternate location.

--The Flood Control Act of 1970 authorized construction of a dam and reservoir for the Ellicott Creek project in New York. Subsequently, legislation was proposed to authorize channel construction instead of the dam and reservoir, but was not enacted. A continuing resolution made a lump-sum appropriation for flood control projects "authorized by law." The Comptroller General concluded that the appropriation did not repeal the prior authority and that therefore the funds could not properly be used for the alternative channel construction. B-193307, February 6, 1979.

Since one Congress cannot bind a future Congress, or subsequent action by the same Congress, an appropriation act may appropriate more or less than the amount contained in the authorization act.

--In 36 Comp. Gen. 240 (1956), Congress had authorized \$7 million for the construction of two bridges across the Potomac River. A subsequent appropriation act made a lump-sum appropriation which included funds for the bridge construction (although not specified in the appropriation) in excess of the amount authorized. The decision concluded that Congress has the power to make an appropriation in excess of a cost limitation contained in the original authorization act, and stated:

"[T]he lack of specific legislation increasing the ceiling on the cost of construction of the two bridges as fixed in the original authorization act does not affect the validity or availability of the appropriation in question for the purpose for which provided." 36 Comp. Gen. at 242. 13/

--Similarly, it was held that the National Park Service could expend its lump-sum appropriation for planning and construction of parks even though the expenditures for specific parks would exceed amounts authorized to be appropriated for those parks. B-148736, September 15, 1977.

--In 53 Comp. Gen. 695 (1974), an authorization act had expressly earmarked \$18 million for UNICEF for specific fiscal years. A subsequent appropriation act provided a lump-sum, out of which only \$15 million was earmarked for UNICEF. The Comptroller General concluded that the \$15 million specified in the appropriation act was controlling and represented the maximum available for UNICEF for that fiscal year.

13/ The decision also discusses contractual obligations in excess of the amount appropriated. Since the appropriation in question was a lump-sum appropriation which did not expressly mention the bridge construction item, this portion of the decision is no longer valid. See subsection F(8) of this Chapter and Chapter 5, infra.

MEMORANDUM
OF CALL

Previous editions usable

TO: *AKC*

YOU WERE CALLED BY YOU WERE VISITED BY

Ken Faith
OF (Organization)

PLEASE PHONE FTS AUTOVON

WILL CALL AGAIN IS WAITING TO SEE YOU

RETURNED YOUR CALL WISHES AN APPOINTMENT

MESSAGE

RECEIVED BY *RF* DATE *10/3/62*

These cases illustrate a point noted in Section D of this Chapter--that an authorization of a specific sum of money or ceiling is aimed not so much at the agency as at the Congress itself through the Appropriations Committees. Where the normal sequence occurs, that is, where the authorization precedes the appropriation, the appropriations committees have the opportunity to have the "last word" in the sense that Congress can appropriate more or less than the amount authorized.

The Congress can also, in an appropriation act, expand the period of availability beyond that specified in the authorization. In B-149372/B-158195, April 26, 1969, an appropriation of Presidential transition funds expressly made available beyond the period specified in the Presidential Transition Act of 1963 was held controlling. Similarly, an appropriation of funds "to remain available until expended" controls over a provision in the authorizing legislation authorizing appropriations on a fiscal year basis. B-182101, October 16, 1974.

By the same reasoning, it has been held that, where Congress appropriated funds for a program whose funding authorization was due to expire during the period of availability of the funds, the funds were available to continue the program during that period of availability, in the absence of indication of contrary intent. 55 Comp. Gen. 289, 292 (1975). This result also applies where the appropriations authorization had already expired. B-137063, March 21, 1966 (concerning an appropriation for a Department of the Interior program for the propagation and conservation of the Hawaiian nene goose). The result in these two cases follows from the fact that the total absence of appropriations authorization legislation would not have precluded the making of a valid appropriation for the programs. E.g., B-202992, May 15, 1981.

Another basic principle is that an authorization act does not expand the scope of availability of appropriations in the absence of provisions in the appropriation act to indicate such a purpose. Thus, an appropriation made for specific purposes is not available for related but more extended purposes contained in the authorization act but not included in the appropriation. 19 Comp. Gen. 961 (1940). See also 26 Comp. Gen. 452 (1947); 35 Comp. Gen. 306 (1955); 37 Comp. Gen. 732 (1958).

The cases discussed so far in this subsection deal with the normal sequence--that is, the authorization act is passed before the appropriation act. Sometimes, however, consideration of the authorization act is delayed and it is not enacted until after the appropriation act. Problems of construction can arise in this situation also. For example, the 1979 Justice Department authorization act authorized a lump-sum appropriation to the Immigration and Naturalization Service and provided that \$2 million "shall be available" for the investigation and prosecution of certain cases involving alleged Nazi war criminals. The 1979 appropriation act made a lump-sum appropriation to INS but contained no specific mention of the Nazi war criminal item. The appropriation act was enacted on October 10, 1978, but the authorization act was not enacted until November. In response to a question as to the effect of the authorization provision on the appropriation, the Comptroller General advised that the two statutes could be construed harmoniously, and that the \$2 million earmarked in the authorization act could be spent only for the purpose specified. It was further noted that the \$2 million represented a minimum but not a maximum. B-193282, December 21, 1978, amplified by B-193282, January 25, 1979.

In another case, Congress appropriated \$75 million for FY 1979 for urban formula grants "as authorized by the Urban Mass Transportation Act of 1964." When the appropriation was enacted, legislation was pending--and was enacted three months after the appropriation--repealing the existing formula and replacing it with a new and somewhat broader formula. The new formula provision specified that it was to be applicable to "sums appropriated pursuant to subparagraph (b) of this paragraph." On the one hand, since the original formula had been repealed, it could no longer control the use of the appropriation. Yet on the other hand, funds appropriated three months prior to passage of the new formula could not be said to have been appropriated "pursuant to" the new act. Hence, neither formula was clearly applicable to the \$75 million. The Comptroller General concluded that UMTA was still required to honor the \$75 million earmarked for the grant program, and that it should be distributed in accordance with those portions of the new formula that were "consistent with the terms of the appropriation," that is, the funds should be used in accordance with those elements of the new formula that had also been reflected in the original formula. B-175155, July 25, 1979.

No-year or multiple-year authorization

Authorization acts sometimes authorize the appropriation of funds to remain available for more than one fiscal year

(multiple-year) or until expended (no-year). If the subsequent appropriation act does not expressly repeat the language prescribing the period of availability, the question arises whether the multiple-year or no-year authority will automatically apply to the appropriation in view of the enacting clause of the appropriation act, which specifies the making of appropriations for a particular fiscal year. A further consideration in the case of no-year authority is 31 U.S.C. § 718 which precludes construction of an appropriation as available continuously without reference to fiscal year unless expressly provided in the appropriation act.

The traditional rule has been that, if the appropriation language specifically refers to the authorization act, then the provisions of the authorization act will be deemed to be incorporated by reference into the provisions of the appropriation. This is sufficient to satisfy 31 U.S.C. § 718 and to overcome the implication of fiscal year availability derived from the enacting clause. 45 Comp. Gen. 236 (1965); 45 Comp. Gen. 508 (1966); B-37398, October 26, 1943; B-127518, May 10, 1956; B-147196, April 5, 1965. If the appropriation language does not specifically refer to the authorization act, the appropriation will be available only for the fiscal year covered by the appropriation act.

A general provision that is now commonly included in appropriation acts provides "No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein." If an appropriation act contains this provision, it will not be sufficient for an appropriation contained in that act to merely incorporate a multiple-year or no-year authorization provision by reference. The effect of this general provision is to require the appropriation language to expressly provide for availability beyond one year in order to overcome the enacting clause. 50 Comp. Gen. 857 (1971); 58 Comp. Gen. 321 (1979).

Changes in the law from year to year may produce additional complications. For example, the National Historic Preservation Act (authorization) provided that funds appropriated and apportioned to States would remain available for obligation for three fiscal years, after which time any unobligated balances would be reapportioned. This amounted to a no-year authorization. For several years, appropriations to fund the program were made on a no-year basis, thus permitting implementation of the authorization provision. However, starting with FY 1978, the appropriation act was changed and the funds were made available for two fiscal years. This

MEMORANDUM OF CALL

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TO: Nancy

YOU WERE CALLED BY - YOU WERE VISITED BY -
Pat Schlesinger

OF (Organization)

PLEASE PHONE ▶ FTS AUTOVON

382-2491

WILL CALL AGAIN IS WAITING TO SEE YOU

RETURNED YOUR CALL WISHES AN APPOINTMENT

MESSAGE

RE: HCPs offered
by MOD

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raised the question of whether the appropriation act had the effect of overriding the apparently conflicting authorizing language, or if it meant merely that reappropriation could occur after two fiscal years instead of three, thus effectively remaining a no-year appropriation.

GAO concluded that the literal language and plain meaning of the appropriation act must govern. In addition to the explicit appropriation language, the appropriation acts contained the general provision restricting availability to the current fiscal year unless expressly provided otherwise therein. Therefore, any funds not obligated by the end of the two-year period would expire and could not be reappropriated. B-151087, September 15, 1981; B-151087, February 17, 1982.

Tennessee Valley Authority v. Hill

Appropriation acts are sometimes perceived to be in conflict with statutes other than authorization acts. The principles involved are essentially the same.

In Tennessee Valley Authority v. Hill, 437 U.S. 153, 57 L.Ed. 2d 117, 98 S. Ct. 2279 (1978), the Supreme Court considered a problem of this type. In that case Congress had authorized construction of the Tellico Dam and Reservoir Project on the Little Tennessee River, and had appropriated initial funds for that purpose. Subsequently, Congress passed the Endangered Species Act of 1973. Under the provisions of that Act, the Secretary of the Interior declared the "snail darter", a small fish, to be an endangered species. It was eventually determined that the Little Tennessee River was the snail darter's critical habitat and that completion of the dam would result in extinction of the species. Consequently, environmental groups and others brought an action to halt further construction of the Tellico Project. In its decision, the Supreme Court held in favor of the plaintiffs, notwithstanding the fact that construction was well under way and that, even after the Secretary of the Interior's actions regarding the snail darter, Congress had continued to make yearly appropriations for the completion of the dam project.

The appropriation involved was a lump-sum appropriation which included funds for the Tellico Dam but made no specific reference to it. However, passages in the reports of the appropriations committees indicated that those committees intended the funds to be available notwithstanding the Endangered Species Act. The Court held that this was not enough. Noting that "Expressions of committees dealing with requests for appropriations cannot be equated with statutes

enacted by Congress" (437 U.S. at 191), the Court held that the unspecified inclusion of the Tellico Dam funds in a lump-sum appropriation was not sufficient to constitute a repeal by implication of the Endangered Species Act insofar as it related to that project.

(7) Errors in Statutes

A statute may occasionally contain what is clearly a technical or typographical error which, if read literally, could alter the meaning of the statute or render execution effectively impossible. In such a case, if the legislative intent is clear, the intent will be given effect over the erroneous language.

In one situation, a supplemental appropriation act made an appropriation to pay certain claims and judgments as set forth in Senate Document 94-163. Examination of the documents made it clear that the reference should have been to Senate Document 94-164, as Senate Document 94-163 concerned a wholly unrelated subject. The manifest congressional intent was held controlling, and the appropriation was available to pay the items specified in Senate Document 94-164. B-158642-O.M., June 8, 1976. The same principle had been applied in a very early decision in which an 1894 appropriation provided funds for certain payments in connection with an election held on "November fifth," 1890. The election had in fact been held on November 4th. Recognizing the "evident intention of Congress," the decision held that the appropriation was available to make the specified payments. 1 Comp. Dec. 1 (1894). See also 11 Comp. Dec. 719 (1905); 1 Comp. Dec. 316 (1895).

In another case, a statute authorized the Department of Agriculture to purchase "section 12" of a certain township for inclusion in a national forest. However, section 12 was already included within the national forest, and it was clear from the legislative history that the "section 12" was a printing error and the statute should have read "section 13." The Comptroller General concluded that the clear intent should be given effect, and that the Department was authorized to purchase section 13. B-127507, December 10, 1962.

Courts have followed the same approach in correcting obvious typographical errors. See Ronson Patents Corp. v. Sparklets Devices, Inc., 102 F. Supp. 123 (E.D. Mo. 1951); Fleming v. Salem Box Co., 38 F. Supp. 997 (D. Ore. 1940).

Error in the amount appropriated

A 1979 decision illustrates one situation in which the above rule did not apply. A 1979 appropriation act contained an appropriation of \$36 million for the Inspector General of the Department of Health, Education, and Welfare. The bills as passed by both Houses and the various committee reports specified an appropriation of only \$35 million. While it

seemed apparent that the \$36 million was the result of a typographical error, it was held that the language of the enrolled act signed by the President must control and that the full \$36 million had been appropriated. The Comptroller General did, however, inform the Appropriations Committees. 58 Comp. Gen. 358 (1979). See also 2 Comp. Dec. 629 (1896).

However, if the amount appropriated is a total derived from specific sums enumerated in the appropriation act, then the amount appropriated will be the amount obtained by the correct addition, notwithstanding the specification of an erroneous total in the appropriation act. 31 U.S.C. § 670; 2 Comp. Gen. 592 (1923).

(8) Use of Legislative History

A fundamental principle basic to the interpretation of both Federal and State laws is that all statutes are to be construed so as to give effect to the intent of the legislature. United States v. American Trucking Association Inc., 310 U.S. 534 (1940); 2A Sutherland, Statutes and Statutory Construction § 45.05 (Sands ed. 1973); 38 Comp. Gen. 229 (1958). This intent may be determined from the words of the statute itself, from the "equity of the statute," from the statute's legislative history, and in a variety of other ways. See Sutherland § 45.05, *supra*. The legislative history may be examined as an aid in determining the intention of the lawmakers when the statute is not clear (see, e.g., United States v. Donruss Co., 393 U.S. 297 (1969); 53 Comp. Gen. 401 (1973)), or when application of the statutory language would produce an absurd or unreasonable result (46 Comp. Gen. 556 (1966)), or if the legislative history provides "persuasive evidence" of what Congress intended. (Boston Sand and Gravel Company v. United States, 278 U.S. 41, 48 (1928)). 55 Comp. Gen. 307, 317 (1975).

Legislative history is, with certain exceptions, used in appropriations law much the same as it is used in other areas of law involving the application of statutes. For example:

- A conference report is generally viewed as the most authoritative single source of legislative history. See, e.g., B-142011, April 30, 1971.
- Where there is direct conflict in the floor debates and there is no more authoritative source of legislative history available, it is legitimate to give weight to such factors as which House originated the provision in question and which House has the more detailed and "clear cut" history. 49 Comp. Gen. 411 (1970).
- Statements of an individual Member of Congress, even if that Member is the bill's sponsor or draftsman, are not controlling in the face of contrary indications in more authoritative portions of legislative history such as committee reports. However, those statements may be accepted in the absence of any other legislative history. B-114829, June 27, 1975.
- Post-enactment comments are normally not given much weight. However, they may be relevant in the absence of other more authoritative material. See B-169491, June 16, 1980.

In construing appropriation acts, the Comptroller General has consistently applied traditional principles of statutory construction so as to give effect to the intent of Congress. In many cases, when the meaning of an appropriation act seemed clear, GAO has resolved questions concerning the propriety of expenditures without resort to legislative history. In other cases, the Comptroller General has referred to the legislative history of an appropriation act in order to properly interpret language in the act that purported to impose qualifications, requirements, or restrictions. See decisions cited at 55 Comp. Gen. 307, 317 (1975). For example, in 49 Comp. Gen. 679 (1970), the legislative history of various Defense Department appropriation acts was examined to determine whether a provision in the 1969 Act precluded payment of certain tuition fees for ROTC students.

Retroactivity of statutes

Statutes and amendments to statutes are construed to apply prospectively only (that is, from their date of enactment or other effective date if one is specified). Statutes will not be construed to apply retroactively unless a retroactive construction is required by express language or by necessary implication or unless it is demonstrated that this is what Congress clearly intended. 38 Comp. Gen. 103 (1958); 34 Comp. Gen. 404 (1955); 28 Comp. Gen. 162 (1948); 16 Comp. Gen. 1051 (1937); 7 Comp. Gen. 266 (1927); 5 Comp. Gen. 381 (1925); 2 Comp. Gen. 267 (1922); 26 Comp. Dec. 40 (1919); B-205180, November 27, 1981; B-191190, February 13, 1980; B-162208, August 28, 1967.

Another line of cases has dealt with a different aspect of retroactivity. GAO is reluctant to construe a statute to retroactively abolish or diminish rights which had accrued before its enactment unless this was clearly the legislative intent. For example, the Tax Reduction Act of 1975 authorized \$50 "special payments" to certain taxpayers. Legislation in 1977 abolished the special payments as of its date of enactment. GAO held in B-190751, April 11, 1978, that payments could be made where payment vouchers were validly issued before the cutoff date but lost in the mail. Similarly, payments could be made to eligible claimants whose claims had been erroneously denied before the cutoff but were later found valid. B-190751, September 26, 1980. GAO has applied similar reasoning in a number of cases involving legislation which reduced entitlements to post-judgment interest, holding that the entitlement to interest should be governed by the law in effect when the judgment was rendered, not when it was submitted for payment. The cases are cited and discussed in the section on "Interest--District courts," Chapter 12, this Manual.

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Restrictions on lump-sum appropriations

This topic is covered in more depth in Chapter 5 of this Manual. It is touched upon briefly here because it illustrates a principle of statutory construction unique to appropriations law.

When Congress enacts a lump-sum appropriation, it is impossible to tell from the face of the statute how the appropriation is to be applied among the items for which it is available. The intended application of the appropriation must be found by examining the budget justification and the alterations to it made in the legislative process and reflected in documents such as committee reports. It is frequently argued that legislative history should be used to define the uses of a lump-sum appropriation in the same manner as it is used to define ambiguous terms in general; that is, that agencies should be bound by restrictions contained in legislative history. However, although legislative history may go far in accomplishing this result as a practical matter, it does not have this effect as a matter of law.

The rule is that restrictions on the use of a lump-sum appropriation are not legally binding on the department or agency concerned unless they are incorporated, either expressly or by reference, in the appropriation act itself (or, of course, in some other statute). E.g., 55 Comp. Gen. 307 (1975); 55 Comp. Gen. 812 (1976); B-163922.42, October 3, 1975. The cited decisions will serve as illustrations:

- A lump-sum appropriation included \$20 million for a Navy combat fighter. The conference report indicated that adaptation of a particular Air Force combat fighter to be capable of carrier operations was the prerequisite for use of the funds. The condition in the conference report, while certainly an indication of congressional intent, was held not legally binding. 55 Comp. Gen. 307.
- An appropriation was made for the construction of two Navy ships. Committee reports subdivided the appropriation between the two, but the statute itself was silent. The exercise of a contract option for one ship, which would obligate funds in excess of the subdivision for that ship as specified in the committee reports, did not violate the Antideficiency Act. 55 Comp. Gen. 812.

--Instructions in committee reports provided that, out of a \$2.4 billion lump-sum Comprehensive Manpower Assistance appropriation to the Department of Labor, \$15 million was to be earmarked for aid to the Opportunities Industrialization Centers. Although recognizing the practical constraints on the Department to use the funds in the manner indicated, the Comptroller General concluded that the earmarking in the committee reports was not legally binding on the Department. B-163922.42, supra.

This rule, which has been recognized by the Congress, was discussed in 55 Comp. Gen. 307, supra, as follows:

"[W]hen Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how the funds should or are expected to be spent do not establish any legal requirements on Federal agencies..

* * * * *

"As observed above, this does not mean agencies are free to ignore clearly expressed legislative history applicable to the use of appropriated funds. They ignore such expressions of intent at the peril of strained relations with the Congress. The executive branch * * * has a practical duty to abide by such expressions. This duty, however, must be understood to fall short of a statutory requirement giving rise to a legal infraction where there is a failure to carry out that duty." 55 Comp. Gen. at 319, 325.

Stated succinctly:

"[A]s a general proposition, there is a distinction to be made between utilizing legislative history for the purpose of illuminating the intent underlying language used in the statute and resorting to that history for the purpose of writing into the law that which is not there." Id. at 325.

D. LUMP-SUM APPROPRIATIONS

A lump-sum appropriation is one that is made to cover a number of specific projects or items. The term is used to contrast a line-item appropriation, which is available only for the specific object described.

Lump-sum appropriations come in many forms. Many smaller agencies receive only a single appropriation, usually termed "Salaries and Expenses" or "Operating Expenses." All of the agency's operations must be funded from this single appropriation. Cabinet-level departments and larger agencies receive several appropriations, often based on broad object categories such as "operations and maintenance" or "research and development." For purposes of this discussion, a lump-sum appropriation is simply one that is available for more than one specific object.

In earlier times when the Federal Government was much smaller and Federal programs were (or at least seemed) much simpler, very specific line-item appropriations were more common. In recent decades, however, as the Federal budget has grown in both size and complexity, a lump-sum approach has become a virtual necessity. For example, an appropriation act for an establishment the size of the Defense Department structured solely on a line-item basis would rival the telephone directory in bulk.

As discussed in Chapter 2 of this Manual, the amount of a lump-sum appropriation is not derived through guesswork. It is the result of a lengthy budget and appropriation process. The agency first submits its appropriation request to Congress through the Office of Management and Budget, supported by detailed budget justifications. Congress then reviews the request and enacts an appropriation which may be more, less, or the same as the amount requested. Variations from the amount requested are usually explained in the appropriation act's legislative history, most often in committee reports. (The process is explained in more detail in Chapter 2, Section E, this Manual.)

All of this leads logically to a question which can be phrased in various ways: How much flexibility does an agency have in spending a lump-sum appropriation? Is it legally bound by its original budget estimate or by expressions of intent in legislative history? How is the agency's legitimate need for administrative flexibility balanced against the Constitutional role of the Congress as controller of the public purse?

The answer to these questions is one of the most important principles of appropriations law. The rule, simply stated, is this: Restrictions on a lump-sum appropriation contained in the agency's budget request or in legislative history are not legally binding on the department or agency unless they are carried into (specified in) the appropriation act itself. The rule carries with it two unstated premises: The agency cannot exceed the total amount of the lump-sum appropriation and its spending must not violate other applicable statutory restrictions. The rule applies equally whether the legislative history is mere acquiescence in the agency's budget request or an affirmative expression of intent.

The rule recognizes the agency's need for flexibility to meet changing or unforeseen circumstances yet preserves congressional control in several ways. First, the rule merely says that the restrictions are not legally binding. The practical wisdom of making the expenditure is an entirely separate question. An agency that disregards the wishes of its oversight or appropriations committees will most likely be called upon to answer for its digressions before those committees next year. An agency that fails to "keep faith" with the Congress may find its next appropriation reduced or limited by line-item restrictions. (That Congress is fully aware of this relationship is evidenced by a 1973 House Appropriations Committee report, quoted in Chapter 2, Section F(2) of this Manual, "Effect of Budget Estimates.") Second, reprogramming arrangements with the various committees (see Chapter 2, Section F(3), this Manual) provide another safeguard against abuse. Finally, Congress always holds the ultimate trump card. It has the power to make any restriction legally binding simply by including it in the appropriation act.

Perhaps the easiest case is the effect of the agency's own budget estimate. The rule here was stated in 17 Comp. Gen. 147 (1937) as follows:

"The amounts of individual items in the estimates presented to the Congress on the basis of which a lump sum appropriation is enacted are not binding on administrative officers unless carried into the appropriation act itself." Id., at 150.

See also B-55277, January 23, 1946; B-35335, July, 17, 1943.

It follows that the lack of a specific budget request will not preclude an expenditure from a lump-sum appropriation which is otherwise legally available for the item in question. To illustrate, the Administrative Office of the U.S. Courts asked for a supplemental appropriation of \$11,000 in 1962 for necessary salaries and expenses of the Judicial Conference in revising and improving the Federal rules of practice and procedure. The House of Representatives did not allow the increase but the Senate included the full amount. The bill went to conference but the conference was delayed and the agency needed the money. The Administrative Office then asked whether it could take the \$11,000 out of its regular 1962 appropriation even though it had not specifically included this item in its 1962 budget request. Citing 17 Comp. Gen. 147, supra, and noting that the study of the Federal Rules was a continuing statutory function of the Judicial Conference, the Comptroller General concluded as follows:

"Thus, in the absence of a specific limitation or prohibition in the appropriation under consideration as to the amount which may be expended for revising and improving the Federal Rules of practice and procedure, you would not be legally bound by your budget estimates or absence thereof.

"If the Congress desires to restrict the availability of a particular appropriation to the several items and amounts thereof submitted in the budget estimates, such control may be effected by limiting such items in the appropriation act itself. Or, by a general provision of law, the availability of appropriations could be limited to the items and the amounts contained in the budget estimates. In the absence of such limitations an agency's lump-sum appropriation is legally available to carry out the functions of the agency."

This decision is B-149163, June 27, 1962. See also 20 Comp. Gen. 631 (1941); B-198234, March 25, 1981.

The issue raised in most of the decisions results from changes to or restrictions on a lump-sum appropriation imposed during the legislative process. The "leading case" in this area is 55 Comp. Gen. 307 (1975), the so-called "LTV case." The Department of the Navy had selected the McDonnell Douglas Corporation to develop a new fighter aircraft. LTV Aerospace Corporation protested the selection, arguing that the aircraft McDonnell Douglas proposed violated the 1975

Defense Department Appropriation Act. The appropriation in question was a lump-sum appropriation of slightly over \$3 billion under the heading "Research, Development, Test, and Evaluation, Navy." This appropriation covered a large number of projects, including the fighter aircraft in question. The conference report on the appropriation act had stated that \$20 million was being provided for a Navy combat fighter, but that "Adaptation of the selected Air Force Air Combat Fighter to be capable of carrier operations is the prerequisite for use of the funds provided." It was conceded that the McDonnell Douglas aircraft was not a derivative of the Air Force fighter and that the Navy's selection was not in accord with the instructions in the conference report. The issue, therefore, was whether the conference report was legally binding on the Navy. In other words, did Navy act illegally in choosing not to follow the conference report?

The ensuing decision is GAO's most comprehensive statement on the legal availability of lump-sum appropriations. Pertinent excerpts are set forth below:

"[C]ongress has recognized that in most instances it is desirable to maintain executive flexibility to shift around funds within a particular lump-sum appropriation account so that agencies can make necessary adjustments for 'unforeseen developments, changing requirements, * * * and legislation enacted subsequent to appropriations.' [Citation omitted.] This is not to say that Congress does not expect that funds will be spent in accordance with budget estimates or in accordance with restrictions detailed in Committee reports. However, in order to preserve spending flexibility, it may choose not to impose these particular restrictions as a matter of law, but rather to leave it to the agencies to 'keep faith' with the Congress. * * *

"On the other hand, when Congress does not intend to permit agency flexibility, but intends to impose a legally binding restriction on an agency's use of funds, it does so by means of explicit statutory language. * * *

"Accordingly, it is our view that when Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how the funds should or are expected to be spent do not establish any legal requirements on Federal agencies. * * *

"We further point out that Congress itself has often recognized the reprogramming flexibility of executive agencies, and we think it is at least implicit in such [recognition] that Congress is well aware that agencies are not legally bound to follow what is expressed in Committee reports when those expressions are not explicitly carried over into the statutory language. * * *

"We think it follows from the above discussion that, as a general proposition, there is a distinction to be made between utilizing legislative history for the purpose of illuminating the intent underlying language used in a statute and resorting to that history for the purpose of writing into the law that which is not there." 55 Comp. Gen. at 318, 319, 321, 325.

Accordingly, GAO concluded that Navy's award did not violate the appropriation act and the contract therefore was not illegal.

The same volume of the Comptroller General's decisions contains another often-cited case, 55 Comp. Gen. 812 (1976), the "Newport News" case (sometimes called "son of LTV," especially by the authors of the LTV decision). This case also involved the Navy. This time, Navy wanted to exercise a contract option for construction of a nuclear powered guided missile frigate, designated DLGN 41. The contractor, Newport News Shipbuilding and Dry Dock Company, argued that exercising the contract option would violate the Antideficiency Act by obligating more money than Navy had in its appropriation.

The appropriation in question, Navy's "Shipbuilding and Conversion" appropriation, provided "for the DLGN nuclear powered guided missile frigate program, \$244,300,000, which shall be available only for construction of DLGN 41 and for advance procurement funding for DLGN 42 * * *." The

committee reports on the appropriation act and the related authorization act indicated that, out of the \$244 million appropriated, \$152 million was for construction of the DLGN 41 and the remaining \$92 million was for long lead time activity on the DLGN 42. It was clear that, if the \$152 million specified in the committee reports for the DLGN 41 was legally binding, obligations resulting from exercise of the contract option would exceed the available appropriation.

The Comptroller General applied the "LTV principle" and held that the \$152 million was not a legally binding limit on obligations for the DLGN 41. As a matter of law, the entire \$244 million was legally available for the DLGN 41 because the appropriation act did not include any restriction. Therefore, in evaluating potential violations of the Antideficiency Act, the relevant appropriation amount is the total amount of the lump-sum appropriation minus sums already obligated, not the lower figure derived from the legislative history. As the decision recognized, Congress could have imposed a legally binding limit by the very simple device of appropriating a specific amount only for the DLGN 41, or by incorporating the committee reports in the appropriation language.

This decision illustrates another important point: the terms "lump-sum" and "line-item" are relative concepts. The \$244 million appropriation in the Newport News case could be viewed as a line-item appropriation in relation to the broader "Shipbuilding and Conversion" category, but it was also a lump-sum appropriation in relation to the two specific vessels included. This factual distinction does not affect the applicable legal principle. As the decision explained:

"Contractor urges that LTV is inapplicable here since LTV involved a lump-sum appropriation whereas the DLGN appropriation is a more specific "line item" appropriation. While we recognize the factual distinction drawn by Contractor, we nevertheless believe that the principles set forth in LTV are equally applicable and controlling here. * * * [I]mplicit in our holding in LTV and in the other authorities cited is the view that dollar amounts in appropriation acts are to be interpreted differently from statutory words in general. This view, in our opinion, pertains whether the dollar amount is a lump-sum appropriation available for a large number of items, as in LTV, or, as here, a more specific appropriation available for only two items."
55 Comp. Gen. at 821-22.

A precursor of LTV and Newport News provides another interesting illustration. In 1974, controversy and funding uncertainties surrounded the Navy's "Project Sanguine," a communications system for sending command and control messages to submerged submarines from a single transmitting location in the United States. The Navy had requested \$16.6 million for Project Sanguine for FY 1974. The House deleted the request, the Senate restored it, the conference committee compromised and approved \$8.3 million. The Sanguine funds were included in a \$2.6 billion lump-sum Research and Development appropriation. Navy spent more than \$11 million for Project Sanguine in FY 1974. The question was whether Navy violated the Antideficiency Act by spending more than the \$8.3 million provided in the conference report. GAO found that it did not, because the conference committee's action was not specified in the appropriation act and was therefore not legally binding. Significantly, the appropriation act did include a proviso prohibiting use of the funds for "full scale development" of Project Sanguine (not involved in the \$11 million expenditure), illustrating that Congress knows perfectly well how to impose a legally binding restriction when it desires to do so. "Legality of the Navy's Expenditures for Project Sanguine During Fiscal Year 1974," LCD-75-315, January 20, 1975; B-168482-O.M., August 15, 1974.

Similarly, the Department of Health, Education, and Welfare received a \$12 billion lump-sum appropriation for public assistance in 1975. Committee reports indicated that \$9.2 million of this amount was being provided for research and development activities of the Social and Rehabilitation Service. Since this "earmarking" of the \$9.2 million was not carried into the appropriation act itself, it did not constitute a statutory limit on the amount available for the program. B-164031(3), April 16, 1975. The decision stated the principle this way:

"[I]n a strict legal sense, the total amount of a line item appropriation may be applied to any of the programs or activities for which it is available in any amount absent further restrictions provided by the appropriation act or another statute."

GAO has applied the rule of the LTV and Newport News decisions in a number of additional cases. Several of these applications, many of which involve variations on the basic theme, are summarized below:

- The 1975 Labor Department appropriation included \$2.4 billion for "Comprehensive Manpower Assistance." A committee report "directing" a specific minimum funding level out of this appropriation for the Opportunities Industrialization Centers--but not carried into the appropriation act itself--was not legally binding on the Labor Department. B-163922, October 3, 1975.
- Agencies are required to pay "rent"--called Standard Level User Charges (SLUC)--to the General Services Administration for the public buildings they occupy. Agencies budget and receive appropriations for SLUC payments just as any other expenditures. Several appropriation acts for 1976 included provisions limiting SLUC payments to 90 percent of the amount charged by GSA. In addition, committee reports on the appropriations for the Department of Agriculture and the Food and Drug Administration specified further reductions in SLUC payments. Since the reductions in the committee reports were not carried into the appropriation acts themselves, the agencies were required to pay the full SLUC assessments, subject only to the 90 percent statutory limitation. B-177610, September 3, 1976; B-186818, September 22, 1976. Applying the rationale of these cases, GAO held in B-204270, October 13, 1981, that an agency was bound to observe a specific dollar limitation on its SLUC payments included in its appropriation act.
- A FY 1978 appropriation act appropriated \$748 million for "Operating Expenses, Fossil Fuels" with no further statutory breakdowns. One of the programs funded from this appropriation was research and development under the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976. The Appropriations Committees had reduced the electric vehicle budget request from \$47 million to \$30 million. However, \$30 million would not have been enough to carry out the statutorily mandated functions under the electric vehicle statute. Applying the general rule, GAO concluded that the lump-sum appropriation was available for obligation in excess of the \$30 million specified in the committee reports for the required functions. B-159993, September 1, 1977. Of course, an agency cannot be expected to do the impossible. If appropriations are insufficient to carry out all programs, the agency must allocate its funds in some reasonable pattern of priorities. Mandatory programs take precedence over discretionary ones. Within the group

of mandatory programs, more specific requirements should be funded first, such as those with specific time schedules, with remaining funds then applied to the more general requirements. *Id.*; see also B-177806, February 24, 1978 (non-decision letter).

--The Department of Agriculture wanted to use its 1978 lump-sum Resource Conservation and Development appropriation to fund existing projects rather than starting any new ones. Instructions from the Appropriations Committees restoring funds for new projects were contained in committee reports but not in the appropriation act itself. The Department's action therefore was legally permissible. B-114833, July 21, 1978.

--The Department of Health, Education, and Welfare wanted to make what it termed "cross-cutting" grants from its 1978 lump-sum Human Development appropriation. The various offices within HEW funded by the Human Development appropriation would contribute a portion of their allocated funds to form a pool to be used to fund projects benefiting more than one target population. Since there were no statutory restrictions on how the lump-sum appropriation could be allocated, the proposal was legally unobjectionable. B-157356, August 17, 1978.

--The Nuclear Regulatory Commission could use its 1980 lump-sum appropriation to provide assistance to intervenors in certain NRC proceedings. (See Chapter 3, this Manual, section on Attorney's Fees.) Although committee reports on NRC's appropriation act expressed a desire that funds not be used for this purpose, the restriction was not written into the statute and the appropriation was otherwise available for the desired expenditure. 59 Comp. Gen. 228 (1980). The decision stressed an important point made earlier in this Section: The "legal availability" of funds for a given expenditure and the practical wisdom of making that expenditure in the face of contrary expressions from congressional committees are two very different questions.

--The Department of Energy had used no-year appropriations to initiate the construction of an authorized facility but subsequently terminated the project for the convenience of the Government. The Department

then wanted to use remaining unobligated funds from the no-year appropriation to establish a different facility, also within the scope of its organic authority. GAO found the expenditure legally permissible. Unobligated funds from a lump-sum appropriation may be used if otherwise proper--within the period of obligational availability or, if no-year funds are involved, without regard to fiscal year--for one project even though the funds were originally earmarked in the budget request or the legislative history for another project. B-202992, May 15, 1981.

Other cases in this "family" are B-44205, September 8, 1944, and B-204449, November 18, 1981.

Finally, the availability of a lump-sum appropriation may be restricted by provisions appearing in statutes other than appropriation acts, such as appropriations authorization acts. For example, if an agency receives a line-item authorization and a lump-sum appropriation to be spent "as authorized by law," the line-item restrictions in the authorization act will apply just as if they appeared in the appropriation act itself. The relationship between appropriation acts and authorization acts is covered in Chapter 2, this Manual.

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clude, as a matter of law, that Ultra has failed to establish the liability of the United States for the detention charges presented in Ultra's claims.

We today have informed TCD to disallow the claim for detention charges of \$1,410 allegedly due Ultra on the shipment moving under GBL No. E-8600339 (our Claim No. TK-975143) and to disallow other similar claims.

[B-183851]

Contracts—Protests—Significant Issues Requirement—Public Policy, etc.

Protest raising issues concerning interpretation of appropriation act and "congressional intent" as public policy will be considered in this case involving selection of a Navy Air Combat Fighter (NACF), whether or not timely filed, since protest raises significant issues concerning relationship of Congress and Executive on procurement matters. Issues regarding evaluation and competition will also be considered since they are substantially intertwined with first issue and since General Accounting Office has continuing audit interest in NACF program.

Appropriations—Navy Department—Contracts—Absence of Statutory Restriction

Navy is not required as matter of law to expend funds provided in lump-sum appropriation act for a specific purpose when statute does not so require, notwithstanding language contained in Conference Report. Absence of statutory restriction raises clear inference that the Report language paralleled and complemented, but remained distinct from, actual appropriation made. Therefore, Navy selection of particular aircraft design for its Air Combat Fighter and resultant award of sustaining engineering contracts cannot be regarded as contrary to law.

Contracts—Negotiation—Awards—Contrary to Public Policy—No Basis for Allegation

While protester argues contract award by Navy should be regarded as void since it is not in accordance with public policy as expressed in congressional Conference Report, award is not contrary to statute, contract does not require any actions contrary to law, and does not represent a violation of moral or ethical standards. Therefore no basis exists to conclude that award is contrary to public policy.

Navy Department—Contracting Methods—Aircraft Procurement—Legality of Expenditures

Although protester argues that Navy did not comply with DOD reprogramming directives, those directives are based on nonstatutory agreements and do not provide a proper basis for determining the legality of expenditures.

Contracts—Negotiation—Awards—Legality

Provision in appropriation act which prohibits use of funds for presenting certain reprogramming requests cannot operate to invalidate contract awards even if awards resulted from reprogramming action since a violation of such provision cannot serve to invalidate an otherwise legal contract award.

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Contracts—Specifications—Conformability of Equipment, etc., Offered—Compatibility With Existing Equipment

Protester's assertion that Navy properly could select only derivative of model selected by the Air Force is incorrect, since reasonable interpretation of request for quotations, read in context of applicable documents, indicates that Navy sought aircraft with optimum performance (within cost parameters) and with due consideration of design commonality with prior Air Force prototype program and with selected Air Force fighter.

Contracts—Negotiation—Evaluation Factors—Criteria

Protester's claim that Navy did not treat offerors on equal basis is not supported by record, which indicates that overall evaluation was conducted in accordance with established criteria and that both offerors were treated fairly.

Contracts—Negotiation—Requests for Quotations—Award Basis

Assertion that engine selected by Navy was not authorized for use with light-weight fighter is without merit, since record indicates selected engine is modified version of baseline engine listed in solicitation. Also, record indicates Navy did not improperly estimate offerors' engine modification costs.

Contracts—Negotiation—Evaluation Factors—Cost Credibility

Navy's cost evaluation of competing proposals was conducted in accordance with proper procedures and established criteria since the Navy's development of its own estimates in determining cost credibility was consistent with sound procurement practices and award of contract to higher priced offeror was not improper.

Contracts—Negotiation—Competition—Limitation on Negotiation—Propriety

Restriction of competition in Navy procurement for Air Combat Fighter (ACF) to offerors furnishing designs derived from Air Force ACF program was proper even though Navy selected derivative of design different from that chosen by Air Force, since solicitation was intended to maximize commonality of both technology and hardware between Air Force and Navy designs and Navy selection was in accordance with solicitation criteria regarding commonality.

In the matter of the LTV Aerospace Corporation, October 1, 1975:

INTRODUCTION

LTV Aerospace Corporation (LTV) has protested the selection by the Department of the Navy of the McDonnell Douglas Corporation (MDC) to develop the Navy Air Combat Fighter (NACF), which is intended to be a low cost complement to the operational F-14 fighter and a replacement for the F-4 and A-7 aircraft. The NACF has resulted from the Department of Defense (DOD) effort to turn away from the increasingly complex top-of-the-line fighter aircraft, as exemplified by the Navy F-14 and the Air Force F-15, and to seek less expensive complements to these weapon systems.

The selection of MDC followed a lengthy competition between MDC and LTV, in which both firms sought to modify aircraft origi-

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nally designed for the Air Force under the Air Combat Fighter (ACF) program so that they would be suitable for aircraft carrier operation. While the Navy was evaluating the designs proposed by both offerors, the Air Force selected the F-16 for its ACF. Although LTV's designs were in varying degrees based on the F-16 design, the Navy ultimately determined that *only the MDC entry*, which was based on the F-17 design not selected by the Air Force, *was suitable for the Navy*. As a result of that determination, the Navy selected the MDC entry, designated it the F-18, and on May 2, 1975, awarded sustaining engineering contracts to MDC and also to General Electric Company (GE) (which is to develop the engines for the aircraft).

Upon announcement of the Navy's selection, LTV filed a protest with this Office, claiming that the Navy's selection was illegal, contrary to public policy, and not in accordance with the established selection criteria.

Specifically, LTV argues that the Navy selection of the F-18 violated the 1975 fiscal year DOD Appropriation Act since the F-18 is not a "derivative" of the F-16 and not common with it, requirements which LTV believes were contemplated by the act. Also, LTV contends that at the very least the selection of the F-18 must be deemed void as against public policy since the selection was contrary to the language of the Conference Report which led to the passage of the act. With respect to the competition itself, LTV contends that MDC and LTV were not properly evaluated in the areas of commonality, engines, and cost, and that the competition itself was unduly restrictive. The relief sought by LTV is initiation of a new competition by the Navy.

The Navy denies all of LTV's allegations. It is the Navy's position that selection of the F-18 complied with both the letter and spirit of the 1975 DOD Appropriation Act, that both LTV and MDC were evaluated fairly and on the same basis, and that the F-18 is the best design for the Navy's requirements.

In considering this protest, we have carefully examined the submissions from the Navy, LTV, and MDC. Also, in view of the technical and cost arguments made in this case, we conducted an audit investigation, the results of which are reflected herein. In addition, we have considered the views expressed in two reports issued by the Library of Congress which deal with some of the points raised by the protestor. It is our considered opinion that the Navy's actions were not contrary to statute or public policy and that the selection was fair and impartial and in accordance with the established selection criteria. Accordingly, for the reasons more fully discussed below, the protest is denied.

It should be noted, however, that this does not mean that the Navy is free to proceed with full-scale development of the F-15. In reaching our conclusion we have not considered the wisdom or cost effectiveness of the Navy's decision, nor have we examined the various alternatives available to the Navy. Our decision, therefore, does not encompass any broad policy questions that might be raised concerning the Navy selection. Rather, it concerns only the award of the short-term sustaining engineering contracts. Award of full-scale development contracts will depend upon congressional authorization of funds for that purpose.

PROCUREMENT HISTORY

LTV's protest can best be understood in the context of the procurement history of the NACF. The present NACF program is the result of several years of exchanges between Congress and the DOD regarding the type of aircraft considered most appropriate for future Navy use, and has evolved from earlier Navy efforts to procure needed levels of combat aircraft. Up until 1971, DOD had intended to procure an all F-14 force for the Navy. However, this plan was altered to a limited procurement of 313 F-14A aircraft (as then indicated in the 5-year defense plan) with possible future procurement. *Hearings on the Lightweight Fighter Aircraft Program Before the Defense Subcommittee of the Senate Committee on Appropriations, 94th Cong., 1st Sess. 35 (1975)* [hereinafter cited as *1975 Senate Appropriations Hearings*].

During this same time period, the Air Force was evaluating the concept of advanced prototyping of aircraft as a means to reduce defense costs and risks by demonstrating the feasibility of utilizing advanced technology before effecting large scale production. The Air Force intended to demonstrate and evaluate the technology for a small, high performance aircraft. *Hearings on Advanced Prototype Before the Senate Committee on Armed Services, 92d Cong., 1st Sess. 23-27 (1971)* [hereinafter cited as *1971 Senate Armed Services Hearings*]. Accordingly, on January 6, 1972, the Air Force issued a request for proposals to conduct a prototype development of the lightweight fighter (LWF) aircraft. (The LWF program was the predecessor to the Air Force's present ACF program, and was intended to implement the concept of a low cost and high performance aircraft, the same concept on which the NACF is based.) In February 1972 five companies responded. Northrop Corporation responded with two proposals and the following four companies responded with one each: Boeing, General Dynamics (GD), Lockheed, and LTV. Evaluation of the six proposals was completed in March 1972, with Northrop and GD announced

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as the winning competitors. Lightweight fighter development contracts in the amounts of \$38 million and \$39.1 million for the GD YF-16 and the Northrop YF-17, respectively, were released on April 14, 1972.

While the Air Force was proceeding with the LWF program, the Navy in 1973 was evaluating various options regarding the procure- ment of a new aircraft. Initially, it was proposed that a prototype fly- off program between a lower cost version of the F-14 and a Naval version of the F-15 be held. This program, however, was regarded as too expensive. 1975 Senate Appropriations Hearings at 36. Ultimately, it was decided to investigate a lighter weight, lower cost, multi-mission aircraft which could serve as a fighter to replace certain F-4 aircraft and also eventually replace the A-7 aircraft in the attack mission. *Id.* This multi-mission airplane was designated the VFAX. In June 1974, the Naval Air Systems Command (NAVAIR) released a presolicita- tion notice to the aerospace industry soliciting expressions of interest in and comments on the proposed VFAX development program. In- dustry responses were received in July 1974.

At this time, the VFAX program was meeting with some opposi- tion in the Congress, in part because the VFAX was not tied to the Air Force prototype program. This led the House Armed Services Committee to recommend deletion from the 1975 DOD Appropriation Authorization Act of the entire \$34 million requested by the Navy to initiate the development of the VFAX. However, the Senate Armed Services Committee recommended inclusion of the entire \$34 million requested for the VFAX. S. Report No. 93-884, 93d Cong., 2d Sess. 95 (1974). The subsequent conference report on the bill recommended inclusion of \$30 million for the VFAX, and ultimately the bill was enacted into law on August 5, 1974, as Public Law 93-365 (88 Stat. 399).

The passage of the Authorization Act did not signal the end of congressional opposition to the VFAX. When the 1975 DOD appro- priation bill came before the House Appropriations Committee, the Committee recommended deletion of all funds requested for the VFAX. However, the Senate Committee on Appropriations recom- mended the inclusion of \$20 million for the VFAX. S. Report No. 93-1104, 93d Cong., 2d Sess. 174 (1974). This difference was finally resolved by the conference committee on the bill, which also recom- mended an appropriation of \$20 million but indicated that the funds were to be spent on a new program element which was designated the NACF:

The Managers are in agreement on the appropriation of \$20,000,000 as pro- posed by the Senate instead of no funding as proposed by the House for the VFAX aircraft. The conferees support the need for a lower cost alternative

to supplement the F-11A and replace F-4 and A-7 aircraft; however, the Comptroller direct that the development of this aircraft make maximum use of the Air Force Lightweight Fighter and Air Combat Fighter technology and hardware. The \$25,000,000 provided is to be placed in a new program element titled "Navy Air Combat Fighter" rather than VFAX. Adaptation of the selected Air Force Air Combat Fighter to be capable of carrier operations is the prerequisite for use of the funds provided. Funds may be released to a contractor for the purpose of designing the modifications required for Navy use. Future funding is to be contingent upon the capability of the Navy to produce a derivative of the selected Air Force Air Combat Fighter design.

H.R. Report No. 93-1363, 93d Cong., 2d Sess. 27 (1974). The DOD Appropriation Act was enacted on October 8, 1974, as Public Law 93-437 (88 Stat. 1212). However, the language of the Act itself did not include any specific direction as to how the funds were to be spent. It stated only the following:

[T]he following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1975, for military functions administered by the Department of Defense, and for other purposes, namely:

* * * * *

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY

For expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; \$3,006,914,000, to remain available for obligation until June 30, 1976.

While Congress was considering the relative merits of the VFAX, NACF, and ACF programs, both the Air Force and the Navy were moving ahead on their respective programs. On September 3, 1974, the Air Force solicited full-scale development proposals for the ACF from both GD and Northrop, whose prototype aircraft had been undergoing comprehensive flight test programs. At approximately the same time, the Chief of Naval Operations released the formal VFAX Operational Requirement and directed NAVAIR to prepare an industry solicitation for VFAX Contract Definition and full-scale development. However, in view of the language in H.R. Report No. 93-1363, quoted above, DOD directed NAVAIR to limit the planned solicitation to derivatives of the LWF and ACF designs. This limitation, the Navy believed, was in accord with the Congressional guidance provided in that report. *Hearings on Department of Defense Appropriations for 1976 Before Defense Subcommittees of the House Committee on Appropriations*. 94th Cong., 1st Sess. 337 (1975) [hereinafter cited as *1975 House Appropriations Hearings*].

Since neither GD nor Northrop (the ACF competitors) had built carrier-capable aircraft, the Navy asked each contractor to develop a partnership arrangement with carrier-capable companies for the NACF procurement in accordance with Armed Services Procure-

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titors) had built contractor to develop companies for the services Procure-

ment Regulation (ASPR) § 4-117 (1974 ed.). After a period of discussion, MDC and Northrop entered into a teaming arrangement on October 2, 1974, with MDC as the prime contractor for the NACF effort. On that same day, GD and LTV also entered into a teaming agreement, which provided that GD would be the prime contractor to the Air Force and that LTV would be the prime contractor to the Navy for any derivative versions of the YF-16. The agreement further provided that if the YF-16 were not selected by the Air Force, then GD would be the prime contractor to the Navy for the NACF. Those contractor relationships were approved by the Navy. *1975 House Appropriations Hearings* at 338.

On October 12, 1974, the Air Force, on behalf of the Navy, issued request for quotations (RFQ) No. N00019-75-Q-0029 to the ACF contractors. The RFQ was originally designed for the VFAX. However, as issued, it solicited proposals for the design, development, test and demonstration of the NACF.

The RFQ called for a cost reimbursement type contract, incrementally funded in part, with proposals to be submitted on a cost-plus-incentive-fee basis. It indicated that proposals should be based on the incorporation of the essential characteristics of the former VFAX into the design of the NACF, and that significant emphasis would be placed on the design-to-cost method of contracting and on life cycle costing. It also advised that proposals should include a technical proposal and trade-off analysis, a test and evaluation plan, a management/capability/facility submission, a design to cost analysis, an ACF derivative analysis, a cost proposal, and an executive summary.

To support the contractor design effort called for by the RFQ, the Navy proposed to utilize approximately \$12 million of the \$20 million designated by the congressional conferees as available for the NACF program. By letter dated November 1, 1974, DOD so informed the Chairmen of the Senate and House Committees on Appropriations. Both Chairmen subsequently responded that their Committees had no objection to the proposed expenditures.

Preliminary responses from both LTV and MDC were submitted on December 2, 1974. Complete RFQ responses were received on January 13, 1975, and contractor technical discussions were held a few days later. LTV proposed two designs essentially based on the YF-16 model, the model 1601 and model 1600, while MDC proposed its model 267, which was essentially based on the F-17. The Navy regarded these initially proposed designs to be unacceptable for carrier use. However, both sets of designs were determined to merit further consideration as capable of being made acceptable. The Navy then entered into discussions with LTV and MDC, pointing out what it considered to be

unacceptable as is in the proposals. Idesignations and proposal revisions continued into March 1975, when LTV offered an additional design it designated the model 1602.

During this period, the Air Force, on January 13, 1975, announced the selection of the General Dynamics design, redesignated as the F-16, as the Air Force ACF choice over the F-17. This decision was explained by the Secretary of Defense at a January 14, 1975, news conference as follows:

In the case of the YF-16 selection by the Air Force, that is one of those happy circumstances in which the aircraft with a higher performance happened to provide the lower cost. . . . We have carefully reviewed the data, and, according to the Air Force data, over a 15-year life cycle, with constant 1975 dollars, the savings for the Air Force by going in the direction of the YF-16 should amount to something on the order of \$1.3 million in R&D, in production costs and in life cycle costs—operation to maintenance costs. . . .

On April 4, 1975, the Navy solicited "best and final" offers from LTV and MDC. Also on that date, the original RFQ was redesignated request for proposals (RFP) No. N00010-75-R-0084 (for MDC) and RFP No. 00010-75-R-0083 (for LTV). Both RFPs were essentially the same (with certain clauses and provisions individually tailored to the proposals of the specific contractors) and essentially similar to the RFQ, except that the RFPs contemplated a letter contract and revised the contract fee arrangement from an incentive fee basis to an incentive fee/award fee basis.

"Best and final" offers were received on April 15, 1975. On May 2, 1975, the Navy announced the selection of the MDC design and the resulting award of sustaining engineering contracts to MDC (\$4.4 million) and GE (\$2 million), the engine developer. Both contracts were to last approximately 4 months, pending award of full-scale development contracts.

TIMELINESS OF THE PROTEST

Before reaching the merits of the protest, we must consider the Navy's assertion that the protest should be dismissed because it was untimely filed. While recognizing that the protest was filed within 5 working days of the Navy's selection announcement on May 2, 1975, the Navy considers this date to be well after the time that LTV knew or should have known the basis for its protest. The Navy's consideration (and ultimate selection) of a design other than a derivative of the F-16 is what the Navy views as the basis for LTV's protest. Since the Air Force selected the F-16 as its ACF on January 13, 1975, the Navy believes LTV was required to protest within 5 days of whenever after that date LTV knew or should have known that the NACF competition was not limited to the LTV designs. The Navy asserts that LTV should have known that the competition was not so

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limited from the "clear and unambiguous statement of evaluation criteria of the RFQ." from the times in January and February when the Navy indicated its intent to continue the competition, and from the language of the April 4 request for best and final offers, which solicited offers from both contractors.

The procedures governing the timeliness of this protest are located in 4 C.F.R. § 20.2 (a) (1975) (this protest was filed prior to the effective date of our new Bid Protest Procedures; see 40 Fed. Reg. 17979 (1975)). They provide in pertinent part as follows:

(a) * * * Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In other cases, bid protests shall be filed not later than 5 days after the basis for protest is known or should have been known, whichever is earlier. * * *

(b) The Comptroller General, for good cause shown, or where he determines that a protest raises issues significant to procurement practices or procedures, may consider any protest which is not filed timely.

We do not believe it is necessary to determine the timeliness of the issues raised by LTV, since we think it is abundantly clear that they are significant and thus proper for consideration by this Office regardless of whether they were timely raised. *Fiber Materials, Inc.*, 54 Comp. Gen. 735 (1975), 75-1 CPD 142. In our view, the protest essentially presents two distinct issues: whether the F-18 selection was in violation of a "congressional directive" and whether the F-18 award resulted from improper and unfair competition. The first issue, raising questions concerning interpretation of a Federal appropriation act and "congressional intent" as public policy, are threshold questions of widespread interest.

In addition, the second basic issue, relating to the propriety, fairness and equality of the evaluation, is substantially intertwined with the first issue since it in part involves the effect of certain legislative history on the interpretation of a solicitation's evaluation criteria. Accordingly, we deem it appropriate to consider these issues. See *Fiber Materials, Inc.*, *supra*; *Ira Gelber Food Services, Inc., et al.*, 54 Comp. Gen. 809 (1975), 75-1 CPD 188. Furthermore, our continuing audit interest in the NACF program militates against our declining to consider the issues raised. *PRC Computer Center, Inc., et al.*, 55 Comp. Gen. 60 (1975), 75-2 CPD 35.

LEGALITY OF CONTRACT AWARD

LTV asserts that the Navy's actions in awarding contracts which will lead to development of the F-18 were illegal because they involved the expenditure of funds in violation of the 1975 DOD Appropriation Act. Title V of that Act, as pointed out above, appropriated for use by the Navy in excess of \$3 billion for "expenses necessary for basic and

applied scientific research, development, test, and evaluation * * *

LTV argues that this statutory provision must be read in light of its legislative history, particularly the Conference Report, H.R. Report No. 93-1363, 93d Cong., 2d Sess. (1974), which was adopted by both houses of Congress when the Act was passed. See 120 *Cong. Rec.* H0446-57 (daily ed. Sept. 23, 1974) and *id.* S17445-50 (daily ed. Sept. 24, 1974). The Conference Report explicitly stated that \$20 million was being provided for a Navy Combat Fighter, but that "Adaptation of the selected Air Force Air Combat Fighter to be capable of carrier operations is the prerequisite for use of the funds provided." The Report also stated that "future funding is to be contingent upon the capability of the Navy to produce a derivative of the selected Air Force Combat Fighter design."

The Navy does not dispute that the F-18 is not a derivative of the F-16 or that the language of the Conference Report precluded the expenditure of the \$20 million on anything other than a derivative of the fighter aircraft design selected by the Air Force. However, it disagrees with LTV's assertion that the Act must be construed in accordance with such language. Rather, the Navy argues that the Act in question appropriates a lump sum, that it is clear and unambiguous on its face, and that under the established and traditional "budgeting and appropriation process" used by Congress and the Defense Department the law cannot be construed as incorporating any restrictions on spending authority which might appear in the Conference Report but which do not appear in the law itself. Although it admits that the congressional desire as to how a lump sum appropriation is to be spent may be indicated by legislative history, the Navy maintains that compliance with that intent when it is not manifested in the law itself is not a statutory or legal requirement, but merely a practical one dictated by an agency's need to maintain good relations with Congress in order to obtain future appropriations. The Navy states that in such situations it either complies with such nonstatutory guidance or else obtains congressional approval for deviating from it through "a mutually-developed DOD Congress working relationship referred to as 'reprogramming.'" The Navy asserts that while it did not formally reprogram in this instance, it did obtain the congressional approval.

On the other hand, LTV argues, in accordance with traditional concepts of statutory interpretation, that Title V of the Act can only mean what Congress intended it to mean and that resort to the legislative history and the Conference Report in particular is necessary to establish that intent. In this regard, LTV claims that Title V contains only broad, general language and does not indicate which projects are encompassed by the words "basic and applied scientific research, develop-

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In determining the meaning of and proper effect to be given to laws enacted by Congress, the courts and this Office generally follow traditional principles of statutory interpretation. A fundamental principle basic to the interpretation of both Federal and State laws is that all such statutes are to be construed so as to give effect to the intent of the legislature. *United States v. American Trucking Association, Inc.*, 310 U.S. 334 (1940); 2 A. Sutherland, *Statutory Construction* § 45.05 (Sands ed. (1973)); 38 Comp. Gen. 220 (1958). This intent may be determined from the words of the statute itself, from the "equity of the statute," from the statute's legislative history, and in a variety of other ways. See Sutherland § 45.05, *supra*. The legislative history of a statute may be examined as an aid in determining the intention of the lawmakers when the statute is not clear, see, e.g., *United States v. Donruss Co.*, 393 U.S. 297 (1969); 54 Comp. Gen. 453 (1974); 53 *id.* 401 (1973), or when application of the statutory language would produce an absurd or unreasonable result, *United States v. American Trucking Association, Inc.*, *supra*; 46 Comp. Gen. 556 (1966), or if that legislative history provides "persuasive evidence" of what Congress intended, *Boston Sand and Gravel Company v. United States*, 278 U.S. 41, 48 (1928).

In construing appropriation acts, we have consistently applied these traditional statutory interpretation principles so as to give effect to the intent of Congress. In many cases, when the meaning of an appropriation act seemed clear, we resolved questions concerning the propriety of expenditures without resort to legislative history. See 54 Comp. Gen. 076 (1975); 53 *id.* 770 (1974); 53 *id.* 328 (1973); 52 *id.* 504 (1973); 52 *id.* 71 (1972); 51 *id.* 797 (1972); 45 *id.* 196 (1965); 34 *id.* 590 (1955); 29 *id.* 410 (1950). In other cases, we have referred to the legislative history of an appropriation act in order to properly interpret language in the act that purported to impose qualifications, requirements, or restrictions. For example, in 53 Comp. Gen. 560 (1974), we reviewed Congressional hearings and reports to determine whether a statutory provision stating that loans may be insured "as follows: * * * operating loans, \$350,000,000" precluded an agency from making or issuing loans in excess of that amount. Similarly, in 49 Comp. Gen. 679 (1970), we examined the legislative history of various DOD appropriation acts to determine whether a provision in the 1969 Act precluded payment of certain tuition fees for ROTC students. See also 54 Comp. Gen. 944 (1975); 53 *id.* 695 (1974); 51 *id.* 631 (1972); 40 *id.* 58 (1960); 30 *id.* 665 (1960); 34 *id.* 309 (1954); 34 *id.* 199 (1954); B-175978, September 7, 1973.

LTV asserts that resort to the legislative history of the 1975 DOD Appropriation Act in this case is necessary to give effect to the intent of Congress. The objective of statutory construction, of course, whether applied to appropriation or other acts, is to ascertain legislative intent with respect to the actual statutory language employed. This necessarily assumes that statements in committee reports and other sources of legislative history are meant to address, explain, and elaborate upon the words of the statute itself. As illustrated above, we have, of course, examined legislative history for such purpose in construing restrictions or other provisions contained in an appropriation statute. At the same time, we have also recognized that, with respect to appropriations, there is a clear distinction between the imposition of statutory restrictions or conditions which are intended to be legally binding and the technique of specifying restrictions or conditions in a non-statutory context.

In this regard, Congress has recognized that in most instances it is desirable to maintain executive flexibility to shift around funds within a particular lump-sum appropriation account so that agencies can make necessary adjustments for "unforeseen developments, changing requirements, incorrect price estimates, wage-rate adjustments, changes in the international situation, and legislation enacted subsequent to appropriations." Fisher, "Reprogramming of Funds by the Defense Department," 36 *The Journal of Politics* 77, 78 (1974). This is not to say that Congress does not expect that funds will be spent in accordance with budget estimates or in accordance with restrictions detailed in Committee reports. However, in order to preserve spending flexibility, it may choose not to impose these particular restrictions as a matter of law, but rather to leave it to the agencies to "keep faith" with the Congress. See Fisher, *supra*, at 82. As the Navy points out, there are practical reasons why agencies can be expected to comply with these Congressional expectations. If an agency finds it desirable or necessary to take advantage of that flexibility by deviating from what Congress had in mind in appropriating particular funds, the agency can be expected to so inform Congress through recognized and accepted practices.

On the other hand, when Congress does not intend to permit agency flexibility, but intends to impose a legally binding restriction on an agency's use of funds, it does so by means of explicit statutory language. Such explicit provisions are not uncommon and are usually found in the DOD appropriation acts. For example, section 624 of the 1970 Act, Public Law 91-171, 83 Stat. 484, approved December 29, 1969, provided that "no part of any appropriation contained in this Act shall be available for the procurement of any article of food,

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clothing, cotton, woven silk * * * or wool * * * not grown * * * or produced in the United States * * *." See 49 Comp. Gen. 606 (1970). The 1974 Act, Public Law 93-238, 87 Stat. 1026, approved January 2, 1974, appropriated \$2,651,805,000 for Navy research, test, development, and evaluation activities but provided "that no part of the appropriation contained in this Act shall be used for Full Scale Development of Project Sanguine." Even the 1973 Act, upon which LTV relies, contained several of these specific restrictions. Title III of the Act provided that "not less than \$355,000,000" of the Army's operation and maintenance appropriation of \$6,137,532,000 "shall be available only for the maintenance of real property facilities." Similar restrictions were placed on the Navy, Air Force, and other DOD elements. Title III also provided that "of the total amount of this appropriation made available for the alteration, overhaul, and repair of naval vessels not more than \$1,130,000,000 shall be available for the performance of such work in Navy shipyards." Title VIII contained several other restrictions or prohibitions on the use of the funds appropriated by the Act. See also 49 Comp. Gen. 679, *supra*; 40 *id.* 58, *supra*; and 30 *id.* 665, *supra*.

Accordingly, it is our view that when Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how the funds should or are expected to be spent do not establish any legal requirements on Federal agencies. Our position in this regard is reflected both in our decisions, *see* 17 Comp. Gen. 147 (1937); B-149163, June 27, 1962; B-164031 (3), April 16, 1975, and in various communications to members of Congress. In 17 Comp. Gen. 147, *supra*, we advised the President of the Board of Commissioners of the District of Columbia that the District was not precluded by the applicable appropriation act from reclassifying administrative positions within the school system merely because of the budget estimates presented to Congress which provided the basis for the appropriation. We said that "Amounts of individual items in the estimates presented to the Congress on the basis of which a lump sum appropriation is enacted are not binding on administrative officers unless carried into the appropriation act itself." 17 Comp. Gen. 147, at 150.

Similarly, in B-149163, *supra*, we held that the Administrative Office of the United States Court could properly expend appropriated funds for rules revision purposes even though the budget estimates did not include any sum for that activity. We stated that:

* * * in the absence of a specific limitation or prohibition in the appropriation under consideration as to the amount which may be expended for revising and improving the Federal Rules of practice and procedure, you would not be legally bound by your budget estimates or absence thereof.

If the Congress desires to restrict the availability of a particular appropriation to the several items and amounts thereof submitted in the budget estimates, such control may be effected by limiting such items in the appropriation act itself. Or, by a general provision of law, the availability of appropriations could be limited to the items and the amounts contained in the budget estimates. In the absence of such limitations an agency's lump sum appropriation is legally available to carry out the functions of the agency.

In B-164031(3), *supra*, we held that the Department of Health, Education, and Welfare was not precluded by its lump sum appropriation act from spending in excess of \$9.2 million for certain research and development activities. We said that the "references in the legislative history . . . to \$9.2 million for carrying out the research and development activities . . . are not statutory limits. Rather, these references are reflective of justifications by HEW and indications by the House and Senate Appropriations Committees as to how \$9.2 million of the lump sum appropriation should be applied."

We have also taken this position recently in a letter and two reports addressed to members of Congress, which resulted from certain reviews of DOD spending. In a March 17, 1975, letter to the Chairman of the Subcommittee on Research and Development, Senate Committee on Armed Services, which has been reprinted at 121 *Cong. Rec.* S8148-51 (daily ed. May 14, 1975), we construed Title V of the 1975 DOD Appropriation Act, the very provision at issue in this case. We said:

Since the RDT&E appropriation is not a line-item appropriation, the amounts appropriated for each department . . . represent the only legally binding limits on RDT&E obligations except as may be otherwise specified in the appropriation act itself.

Also, in our Reports LCD-75-310 and LCD-75-315, both entitled "Legality of the Navy's Expenditures For Project Sanguine During Fiscal Year 1974" [hereinafter cited as *Project Sanguine Report*] and dated January 20, 1975, we examined a situation somewhat analogous to the instant case. DOD had requested \$18,675,000 for Project Sanguine. The Senate Committee on Appropriations voted to give DOD the full amount, while the House Committee on Appropriations deleted all of it. The Conference Committee approved \$8.3 million for the Project on the condition that none of the funds be used for full-scale development. The bill that was ultimately enacted into law provided a lump sum in excess of \$2.6 billion for Navy RDT&E, but with the restriction, referred to above, that none of the funds could be used for full-scale development of Project Sanguine. The Navy spent in excess of \$11.7 million of such 1974 year funds on the Project. After quoting from our decision at 17 *Comp. Gen.* 147, *supra*, we said that the fact that the Conference Committee limited Project Sanguine funds to \$8.3 million "cannot operate so as to insert in a statute a limitation not imposed by its terms" and that "the action of the Committee of Confer-

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We further point out that Congress itself has often recognized the reprogramming flexibility of Executive agencies, and we think it is at least implicit in such condition that Congress is well aware that agencies are not legally bound to follow what is expressed in Committee reports when those expressions are not explicitly carried over into the statutory language. See, e.g., H.R. Report No. 408, 86th Cong., 1st Sess. 20 (1959); H.R. Report No. 1607, 87th Cong., 2d Sess. 21 (1962); *Hearings On Department of Defense Appropriations for 1971 Before Defense Subcommittee of the House Committee on Appropriations, Part 5*, 91st Cong., 2d Sess. 1114-15 (1970); see also Fisher, *supra*, particularly at 80-87. In addition, however, there is also explicit Congressional recognition of the legal effect of enacting unrestricted lump sum appropriations. Last year a report of the House Committee on Appropriations included the following statement:

In a strictly legal sense, the Department of Defense could utilize the funds appropriated for whatever programs were included under the individual appropriation accounts, but the relationship with the Congress demands that the detailed justifications which are presented in support of budget requests be followed. To do otherwise would cause Congress to lose confidence in the requests made and probably result in reduced appropriations or line item appropriation bills. H.R. Rep. No. 93-662, 93d Cong., 1st Sess. 16 (1973).

However, despite our case holdings and the sundry manifestations of Congressional understanding of the distinction between imposing spending restrictions as a matter of law and imposing them on a non-statutory, legally non-enforceable basis, LTV argues that "the process of interpretation applicable to general appropriation statutes" is no different from the process "applicable to all other statutes." LTV cites several cases for the proposition that such statutes do not give the Navy "unbridled discretion in the face of specific limitations in the legislative history."

We have carefully reviewed the cases cited by LTV; however, we do not find that our view of appropriation acts is erroneous. We note that in none of the cases cited was the court faced with the issue presented here. In *Beck v. Laird*, 317 F. Supp. 715 (E.D.N.Y. 1970), which LTV relies on for the statement "An appropriations act is like any other act of Congress," it is clear that the court was not talking about statutory interpretation, but about how an act becomes law. See 317 F. Supp. at 728. In *United States v. Dickerson*, 310 U.S. 554 (1940), the Court consulted the legislative history of a Public Resolution which imposed a restriction on the use of fiscal year appropriated funds to determine the proper interpretation of that restrictive provision. The case, however, involved neither a general appropriation act nor the legislative history of such an act, and was merely another case

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in which a restrictive provision was construed in light of its legislative history. See cases cited, p. 13, *supra*.

In *Winston Bros. Co. v. United States*, 130 F. Supp. 374, 131 Ct. Cl. 245 (1955), the court relied on a statement attached to a Conference Report by the Managers of an appropriation bill from the House of Representatives to uphold an agency's allocation of funds with respect to construction work on a reclamation project. The statement indicated that the conferees agreed that the funds being appropriated, which were insufficient to fund the entire project, should be allocated for power generation purposes. Although the appropriation act itself contained no such allocation, the agency did allocate the money in accordance with that statement. As a result, irrigation contractors experienced delay and disruption because funds were not provided for their portion of the project work.

The court, in considering the contractors' claims, upheld the Bureau's allocation, stating:

The officials of the Bureau of Reclamation took the statement . . . as law. While it was not in the Conference Report, it said that the conferees had agreed that that was the intention of the appropriation. . . . In the circumstances it was the duty of the Bureau of Reclamation to respect the known intent of the responsible managers of the legislation. 130 F. Supp. at 377.

LTV argues that since it was the duty of the agency in *Winston Bros. Co.* to respect the known intent of the Congressional managers, it was the duty of the Navy in this case "to respect the known intent of Congress as expressed by the mandate of the Conference Report." Although the case does appear to lend some support to LTV's position, we do not believe the case may be read as establishing a general statutory duty on the part of the agency to comply with non-statutory legislative statements as to how funds should be spent since the court did not have to consider the question of whether the agency would have violated the appropriation act if the funds had not been allocated in accordance with the statement.

In *United States v. State Bridge Commission of Michigan*, 109 F. Supp. 690 (E.D. Mich. 1953), the court relied on the testimony given by an agency official at hearings on an appropriation bill to uphold a particular expenditure. The case involved a suit brought by the United States for recovery of certain lease payments. The Government argued that the lease was invalid because a specific appropriation for the lease payments had not been enacted. The court held against the Government after an examination of the legislative history of the agency's general appropriation revealed that Congress had increased the agency's appropriation in response to an agency request for additional funds to pay for the lease in question. On these facts, the court held only that "Congress is not required to set out with particularity each

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item in an appropriation as a requisite of validity. It is enough that the appropriation be identifiable sufficiently to make clear the intent of Congress." 109 F. Supp. at 694. We think it is evident that this case concerned no more than the question of whether an expenditure for a particular activity or purpose was within the purview of the agency's general appropriation. The fact that the court resorted to legislative history, as indeed we have done to resolve questions involving both authorization and appropriation statutes, *see, e.g.*, 51 Comp. Gen. 245 (1971); 39 *id.* 388 (1959), does not establish that spending restrictions indicated in legislative history are binding on an agency when the resulting appropriation statute is silent as to those restrictions.

In *Morton v. Ruiz*, 415 U.S. 109 (1974), the Supreme Court examined in detail the legislative history of various appropriation acts to resolve the "narrow but important issue" of whether general assistance benefits are available for Indians living off, although near, a reservation. The Bureau of Indian Affairs (BIA), relying on a provision in its Indian Affairs Manual, had ruled that the respondent Indians were ineligible for assistance because they did not live on a reservation. The appropriation acts provided funds "For expenses necessary to provide education and welfare services for Indians * * * and other assistance to needy Indians * * *." The Court noted that neither the Snyder Act, which authorizes most BIA activities, nor the appropriation acts imposed any geographical restrictions on eligibility for assistance, but that BIA officials, in hearings on bills providing for BIA appropriations, had frequently stated that assistance was available for Indians who lived on or near reservations. The Court therefore concluded that BIA's appropriated funds were "intended to cover welfare services" for Indians residing "on or near" reservations, 415 U.S. at 230, and then went on to hold that BIA could not deny those benefits to the respondents since it had failed to comply with the Administrative Procedure Act in promulgating the restrictive provision in its Manual.

We fail to see how this case supports LTV's position. In essence, what the Court did was to utilize legislative history to determine whether an expenditure for a particular purpose was intended by Congress to be encompassed by a general appropriation provision, which is precisely what was done in *United States v. State Bridge Commission of Michigan*, *supra*. With respect to the absence of restrictive language in the statute, the Court stated while it was "not controlling, it is not irrelevant that the 'on reservations' limitation in the budget requests has never appeared in the final appropriation bills." 415 U.S. at 214. We would regard that statement as consistent with our view that Congress, when it intends to impose a legal spending restriction,

does so through specific statutory language. However, LTV, relying on the words "not controlling," asserts that this language represents explicit Supreme Court recognition that the absence of restrictive statutory language is not "controlling" in determining whether Congress intended to impose a legally enforceable limitation on spending. We do not believe that the Court's statement should be read that way. As indicated above, the *Ruiz* case involved judicial resort to legislative history to aid the court in determining whether a particular expenditure was within the purview of the applicable general appropriation act. In such a situation, of course, the absence of a specific restriction in a general appropriation act indeed is not controlling. See, e.g., in addition to *United States v. State Bridge Commission of Michigan*, *supra*, 53 Comp. Gen. 770, *supra*; 53 *id.* 328, *supra*; and 52 *id.* 504, *supra*. Accordingly, in view of the context of the case in which it was used and in view of the otherwise uniform interpretation of Federal appropriation acts as discussed herein, we believe the Court's language reasonably must be construed as referring only to those situations in which it must be determined whether a particular expenditure is encompassed within a general appropriation.

If anything, we think the *Ruiz* case reflects Supreme Court recognition of Executive agency flexibility to manage funds within the general framework of the applicable statutory language. Thus, Mr. Justice Blackmun, writing for the unanimous Court, stated:

Having found that the congressional appropriation was intended to cover welfare services at least to those Indians residing "on or near" the reservation, it does not necessarily follow that the Secretary is without power to create reasonable classifications and eligibility requirements in order to allocate the limited funds available to him for this purpose. * * * Thus, if there were only enough funds appropriated to provide meaningfully for 10,000 needy Indian beneficiaries and the entire class of eligible beneficiaries numbered 20,000, it would be incumbent upon the BIA to develop an eligibility standard to deal with this problem, and the standard, if rational and proper, might leave some of the class otherwise encompassed by the appropriation without benefits. 415 U.S. at 230-31.

Finally, in *Scholder v. United States*, 428 F. 2d 1123 (9th Cir. 1970), *cert. denied*, 400 U.S. 942 (1970), the court considered a claim that BIA's expenditure of appropriated funds on an Indian irrigation project which included work that would benefit solely a non-Indian was unauthorized. The appropriation act merely referred to "construction, major repair, and improvement of irrigation and power systems." The court looked at both BIA's authorization act and the legislative history of the appropriation act, noted that the budget requests presented to Congress indicated that non-Indians would benefit from the irrigation projects, and concluded that Congress did not intend to preclude expenditures that would benefit non-Indians. The court stated that "If Congress had wanted to impose on the Bureau the restrictions urged by appellants, it could have done so easily." 428 F.

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21 at 1129. LTV cites this case for the proposition that "reliance may be placed on the legislative history of a general appropriation act to determine the precise authority of the executive agency with respect to the expenditure of the appropriated funds." Once again, however, in *Scholder* the Court merely referred to legislative history to determine if expenditures that would benefit non-Indians were within the language of the broadly worded appropriation statute. The court did not at all consider whether an expenditure clearly within the purview of the appropriation language was nonetheless prohibited because of statements in legislative history.

We think it follows from the above discussion that, as a general proposition, there is a distinction to be made between utilizing legislative history for the purpose of illuminating the intent underlying language used in a statute and resorting to that history for the purpose of writing into the law that which is not there.

If a statute clearly authorizes the use of funds for the procurement of "military aircraft" without restriction, it must be construed to provide support for the validity of procuring any such aircraft. The fact that the legislative history makes clear that one type of military aircraft rather than another is to be acquired does not restrict the unequivocal grant of authority carried in the statute itself. To be binding as a matter of law, an intention to so restrict the legal availability of the funds provided would have to be expressed in the statute. However, if the issue is whether a particular aircraft is in fact a "military aircraft," as that term is used in the statute, resort to legislative history is required.

An accommodation has developed between the Congress and the Executive branch resulting in the appropriation process flexibility discussed above. Funds are most often appropriated in lump sums on the basis of mutual legislative and executive understandings as to their use and derive from agency budget estimates and testimony and expressions of intent in committee reports. The understandings reached generally are not engrafted upon the appropriation provisions enacted. To establish as a matter of law specific restrictions covering the detailed and complete basis upon which appropriated funds are understood to be provided would, as a practical matter, severely limit the capability of agencies to accommodate changing conditions.

As observed above, this does not mean agencies are free to ignore clearly expressed legislative history applicable to the use of appropriated funds. They ignore such expressions of intent at the peril of strained relations with the Congress. The Executive branch—as the Navy has recognized—has a practical duty to abide by such expressions. This duty, however, must be understood to fall short

of a statutory requirement giving rise to a legal infraction where there is a failure to carry out that duty.

Accordingly, for the reasons discussed above, we believe that the Conference Committee statement on which LTV relies constitutes, in effect, a "directive" which parallels and complements—but, in a strict legal sense, remains distinct from—the actual appropriation made. Therefore, it is our conclusion that the Navy's award of contracts to MDC and GE did not violate Title V of the 1975 DOD Appropriation Act and in that regard the contracts cannot be considered illegal.

PUBLIC POLICY CONSIDERATIONS

LTV also argues that the award to MDC must be considered "invalid and void" because it was contrary to "a clear public policy in favor of the utilization of one basic aircraft technology and design to fulfill the needs of both the Navy and the Air Force for a light-weight Air Combat Fighter."

We think this public policy argument is misplaced. It is true that courts have long declared contracts "to be illegal on the ground that they are contrary to public policy." 6A A. Corbin, *Contracts* § 1375 (1962). In some instances, such contracts call for a result which is contrary to statute. See, e.g., *Lakos v. Saliaris*, 116 F. 2d 440 (4th Cir. 1940). In other instances the contracts, while themselves not illegal *per se*, result from behavior which is contrary to law. *United States v. Mississippi Valley Generating Co.*, 304 U.S. 520 (1961); *United States v. Acme Process Equipment Company*, 385 U.S. 138 (1966). In the *Mississippi Valley Generating Co.* case, the Supreme Court held unenforceable a Government contract resulting from behavior which was violative of a conflict of interest law. In the *Acme Process* case, the Court held that the Government could cancel a contract because of violations of the Anti-Kickback Act. In both cases the Court found that nonenforcement and cancellation were "essential to effectuating the public policy embodied" in the statutes. 304 U.S. at 563; 385 U.S. at 145.

Contracts, however, are not lightly treated as invalid. "It is a matter of public importance that good faith contracts of the United States should not be lightly invalidated," *Muschany v. United States*, 324 U.S. 49, 66 (1945), and such contracts will not be regarded as invalid unless they are plainly or palpably illegal. *John Reiner and Company v. United States*, 325 F. 2d 438, 163 Ct. Cl. 381 (1963), *cert. denied*, 377 U.S. 931 (1964); *Coastal Cargo Company, Inc. v. United States*, 351 F. 2d 1004, 173 Ct. Cl. 259 (1965); *Warren Bros. Roads Co. v. United States*, 355 F. 2d 612, 173 Ct. Cl. 714 (1965); 52 Comp. Gen. 215 (1972);

50 *id.* 670 (1972) is alleged to be a definite indication of the enactment of the contract as such. The Court will not *Muschany v.*

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50 *id.* 879 (1971); 50 *id.* 583 (1971); 50 *id.* 396 (1970). When a contract is alleged to be illegal on public policy grounds, "there must be found definite indications in the law * * * to justify the invalidation of a contract as contrary to that policy. * * * In the absence of a plain indication of that policy through long governmental practice or statutory enactments, or of violations of obvious ethical or moral standards, [the Court will not] * * * declare contracts * * * contrary to public policy." *Muschany v. United States, supra*, at 66-67.

Here, while it is clear that the Congressional Conference Committee desired the Navy to develop a derivative of the Air Force ACF suitable for carrier operations, there was not, as discussed above, any statutory requirement or "indication" compelling the Navy to do so. Thus, unlike the situations in the *Mississippi Valley* and *Acme Process* cases, *supra*, there were no statutory violations attending the award of the contract to MDC. It is also clear that the awarded contract does not require any actions which are contrary to law, and we do not perceive any violation of moral or ethical standards. Accordingly, in view of the strong presumption in favor of the validity of contracts, we are unable to conclude that the Navy's award to MDC is void as contrary to public policy.

REPROGRAMMING

LTV next argues that even if the Navy's actions were not contrary to statute or public policy considerations, those actions cannot be upheld because the Navy did not comply with the applicable DOD Directive and Instruction on reprogramming. LTV claims that since the provisions of the directives were not followed, the Navy did not effectively reprogram its RDT&E funds and therefore was without authority to fund the MDC & GE design efforts or to award the sustaining engineering contracts.

As discussed above, the Congress has recognized the desirability of maintaining executive flexibility to shift funds within a particular appropriation account. The methods by which agencies accomplish this have become known as reprogramming. See generally, *Fisher, supra*. Although Congress, in enacting unrestricted lump-sum appropriations, has continued to provide this reprogramming flexibility, it has also from time to time manifested a desire to subject reprogramming to closer congressional scrutiny and control. See *Fisher, supra*, at 79, 97. In response to this congressional desire, DOD developed a set of instructions on reprogramming. *Fisher, supra*, at 82. The current DOD instructions, DOD Directive 7250.5 and DOD Instruction 7250.10, both dated January 14, 1975, contemplate that in many instances approval of the Congressional Appropriations Committees and in some instances

the Armed Services Committees as well is a prerequisite to a reprogramming action.

The Navy believes that it complied with both the direction of Congress and with the spirit and intent of the reprogramming directives by obtaining the necessary approval from the House and Senate Appropriations Committees. In this regard, the Navy refers both to the November 1, 1974, letters, and responses thereto, sent to the Chairmen of the two Appropriations Committees (see p. 313, *supra*), and to letters sent to both Chairmen again on March 7, 1975. Those letters, written after the Air Force selected the F-16, stated that the Navy was completing "its evaluation of both firms' proposals in a fully competitive atmosphere," and that if "an acceptable design [could] be found it will be necessary to use the remainder of the present appropriation to contract with the selected firm to refine its design and sustain its engineering effort pending formal program approval to undertake full scale development in FY 1976." Once again, the Chairmen did not express any objections to the Navy's intended course of action.

LTV argues that reprogramming is a narrowly structured method for obtaining congressional approval for shifting funds within an account, and that what the Navy did here fell far short of meeting reprogramming requirements. For example, LTV points out that the Navy did not utilize the formal reprogramming form (DD Form 1415) required by DOD Instruction 7250.10 and did not even refer to reprogramming in the correspondence sent to the Committee Chairmen.

While it may be that the Navy did not literally comply with the applicable DOD directives on reprogramming, these DOD directives, unlike laws and regulations, do not provide this Office with a proper basis for determining the legality of expenditures. See *Project Sanguine Report* at 11. As previously noted, reprogramming is a nonstatutory device based on nonstatutory agreements and understandings. See Fisher, *supra*, at 70. Thus, the propriety of what the Navy did in this case is properly a matter for resolution by Congress and the Navy rather than by this Office.

LTV also argues that if what the Navy did here can be characterized as reprogramming, then the 1975 DOD Appropriation Act was violated because section 843 of that Act precludes the use of funds appropriated by the Act for preparation or presentation of a reprogramming request (with certain exceptions not relevant here). Section 843 of the Appropriation Act provides:

No part of the Funds in this Act shall be available to prepare or present a request to the Committee on Appropriations for the reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by the Congress.

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Section 843 may have been violated if the Navy's actions amounted to reprogramming. Even assuming—without conceding—that this is the case, since the conference language is not to be read into the statute, a violation of section 843 cannot serve to invalidate an otherwise legal contract award. See *Project Sanguine Report* at 12.

Accordingly, we are unable to object to the awards on the basis of LTV's reprogramming arguments.

THE COMPETITION

Introduction

The Navy utilized formal source selection procedures in evaluating proposals submitted by MDC and LTV and selecting a winner. For evaluation purposes, the RFQ/RFP established the equally weighted factors of performance and cost as the most important criteria. Commonality was the third most important factor. Other factors included reliability and maintainability, logistics support, development risk, lot I cost, DT&E program, management, and facilities and resources.

Rejection of the three LTV designs was based on unsatisfactory ratings in the performance area, particularly combat performance and overall carrier suitability. Although LTV does not concede the nonsuitability of its designs, it does not argue, in the context of this protest, that the Navy should have regarded one or more of its designs as acceptable. Rather, LTV argues that the competition was not fairly conducted and that it was prejudiced as a result. It also asserts that there came a point in the evaluation when the Navy was obliged by both statute and regulation to terminate the competition rather than award a contract to a firm offering an NACF design other than a derivative of the F-16.

LTV objects to the evaluation of proposals on several grounds. It argues that the LTV and MDC submissions were not evaluated on an equal basis and that MDC and LTV were not accorded equal treatment during the competition. The primary basis for LTV's argument is its belief that it was penalized by the Navy for complying with the applicable evaluation criteria while MDC was permitted to deviate from those criteria. LTV also questions whether its cost proposal was evaluated against the solicitation's criteria and in the same manner as the MDC cost proposal. Finally, LTV asserts that the Navy's conduct of this procurement resulted in a violation of the Armed Services Procurement Act, 10 U.S. Code § 2304(g) (1970) and section 3-101 of the Armed Services Procurement Regulation because the Navy improperly restricted competition.

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LTV's assertions here, as they relate to its technical proposal, essentially revolve around the RFQ/RFP evaluation criterion concerning "commonality" and a listing of equipment in the RFQ that included certain aircraft engines. LTV claims that the commonality criterion referred to commonality with the F-16 and required that the NACF be a derivative of the F-16. LTV states that it complied with this requirement but MDC did not. The thrust of LTV's position here is twofold. First, LTV states that its proposal was regarded as unsuitable by the Navy precisely because it complied with the evaluation criteria and offered designs that incorporated F-16 derivative features (LTV identifies two of these features as automatic angle of attack limiter and fly by wire control system). With regard to the engines, LTV believes that the RFQ listed four engines as acceptable and that the Navy did not properly evaluate the MDC design which proposed the use of a non-listed engine.

Commonality

As indicated above, the third most important evaluation criterion was listed as "the proposal which demonstrates the highest degree of commonality with, and makes the maximum use of Air Lightweight Fighter and Air Combat Fighter technology and hardware." It is LTV's position that this criterion implements the statement in H.R. Report No. 93-1383 that the NACF be a carrier-suitable adaptation of the selected Air Force ACF and must therefore be read to require commonality with the F-16.

In support of its position, LTV focuses on the relationship between the RFQ/RFP commonality criterion and the Air Force's October 12, 1974, letter which accompanied the RFQ. That letter provided in pertinent part as follows:

1. The Navy is initiating a program for the development and production of a new carrier based fighter/attack aircraft weapon system to be a derivative of Air Force Lightweight Fighter program. In the House of Representatives Report No. 93-1383 of 18 September 1974, it was directed that the development of this aircraft make maximum use of the Air Force Lightweight Fighter (USAF LWF) and Air Combat Fighter (ACF) technology and hardware.

2. Enclosure (2) [the RFQ] reflects performance characteristics and other parameters of the aircraft as described in the Navy's operational requirement. Achievement of these characteristics and parameters is an important goal. Contractors should provide at least one point design of an aircraft which responds to the operational requirements as defined by the requirements specification and the desired maximum use of the USAF LWF and ACF technology and hardware. Trades should be performed which analyze the gains and penalties associated with achieving this goal. Gains may include cost and scheduled savings during development, and acquisition and lower overall life cycle costs based on commonality with the ACF Aircraft. Penalties may include failure to meet performance and specification goals, thereby reducing the potential effectiveness of the Navy aircraft. The trade studies should quantify derived benefits and identify any penalties so that the Navy can determine an acceptable balance between the two. In order to assure that all opportunities for commonality are explored, the contractors must provide a design including the same engine which they propose for use with the USAF ACF. In addition, the contractors also are requested to pro-

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3. It is the Navy's intent to consider reliability, maintainability, survivability, schedule and cost along with performance and capability in accordance with the solicitation evaluation criteria in judging designs. Flexibility and tradeoffs are encountered where significant cost savings can be realized or reliability and maintainability can be enhanced. These trade-offs should be documented to the Navy. It may not be possible in the time allowed to submit a fully documented engineering development proposal.

4. The new Navy aircraft is intended to replace F-4 aircraft in both the Navy and Marine Corps and eventually the A-7 in the Navy. Accordingly, the aircraft should have a capability to effectively perform long range fighter escort and strike missions into high threat areas. The aircraft must possess good carrier suitability features and be fully compatible with that environment. It must also provide a significant improvement in reliability, maintainability, and survivability over current Navy tactical aircraft. Furthermore, it must offer affordable acquisition and life cycle costs. Initial Fleet deliveries are required no later than calendar year 1981.

The letter also encouraged the ACF contractors to prepare their proposals so as to achieve "lower costs and increased commonality between the ACF and the Navy derivative" and stated that if a Navy derivative of the LWF program could be developed, it was anticipated that full-scale development of the NACF would be initiated by the Navy. Attached to the Air Force's cover letter was a document captioned "CRITERIA FOR EVALUATION AND SOURCE SELECTION." That document provided that "Proposals for Full Scale Development received in response to this solicitation will be evaluated by the Naval Air Systems Command pursuant to a formal source selection procedure. The following evaluation criteria apply, in the context of the considerations outlined in the covering letter." The document then set out criteria that were essentially the same as those contained in the attached RFQ.

LTV points out that this letter indicated that: 1) an important goal to the Navy was maximum reasonable commonality between the ACF and "the Navy derivative"; 2) at least one point design was desired which represented the maximum use of LWF and ACF technology and hardware; 3) contractors were encouraged to use imaginative approaches in achieving lower costs and increased commonality between the ACF and the Navy derivative; and 4) that full-scale development was anticipated if a derivative of the LWF program could satisfy Navy needs. LTV places considerable weight on the references to a Navy derivative of the ACF as establishing the type of aircraft desired by the Navy. It also finds significance in the statement that the evaluation criteria were to be applied "in the context of the considerations of the covering letter." LTV argues that the only reasonable reading of these documents is that the commonality criterion required that the NACF be a derivative of the ACF, and that commonality could be maximized only if measured against the F-16. In addition, LTV asserts that its interpretation was buttressed on several occasions

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when it was told by DOD officials that the NACF would be a derivative of the ACF. While LTV recognizes that the F-16 was not chosen as the ACF until January 13, 1975, it argues that after that date the Navy was required to consider the F-16 as the basic NACF design.

The Navy concedes that the F-18 is not a derivative of the F-16. However, it is the Navy's position that the RFQ/RFP did not contain a requirement that the ACF be adapted for Navy use. Rather, the Navy states that the RFQ/RFP was designed to solicit the optimum lightweight fighter for the Navy that would, within the performance and cost parameters established for the NACF, maximize commonality of both technology and hardware of the LWF and ACF programs. The Navy contends that its selection of the F-18 is entirely consistent with that interpretation.

We think the Navy is correct. The language of the third criterion leaves little doubt that commonality was to be sought with both the LWF and ACF programs and, more specifically, with both the technology and hardware associated with the two programs. As noted, however, LTV argues that the criterion must be interpreted in light of the Air Force letter accompanying the RFQ which, LTV believes, would establish that commonality in this instance meant only a derivative of the F-16. We agree with LTV that the evaluation criteria should be read in connection with the accompanying Air Force letter. *Cf. Xerox Corporation, B-180341, May 10, 1974, 74-1 CPD 242.* We do not agree, however, that the letter can be reasonably read as LTV argues.

We think it is clear that the language of the letter was directed toward the overall LWF program, of which the YF-17 was a significant part, and not merely the selected F-16. For example, the initial paragraph of the letter stated that the NACF was to be a derivative of the "Air Force Lightweight Fighter Program," and characterizes the Conference Report as desiring maximum use of both LWF and ACF technology and hardware. Furthermore, the letter advised that NACF development would be initiated if a derivative of the Air Force Lightweight Fighter program was satisfactory. In addition, many of the references to "ACF" appear to refer not to the selected Air Force design (the Air Force ACF had not yet been chosen), but to the entries of each of the offerors competing for the Air Force ACF award. See, in this regard, the second paragraph of that letter, which advises "contractors * * * [to] provide a design including the same engine which they propose for use with the USAF ACF."

It is also clear from the letter that while maximum commonality was desired (and we agree that the maximum possible commonality would result in a close derivative of the Air Force selection), contrac-

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tors were expected to make tradeoffs in order to satisfy cost and performance requirements. Thus, the letter specifically referred to commonality as a goal rather than a mandatory feature. In this connection, we also point out that commonality in fact was not a requirement, but rather an evaluation factor, pursuant to which proposals would be rated on the degree to which commonality (with the totality of the LWF and ACF programs) was attained. No minimum level of commonality was ever established by the RFQ/RFP or associated documents.

LTV argues that such an interpretation would not permit realization of the significant cost savings which is the very goal of the commonality objective. We think the record suggests otherwise. The Navy has pointed out that the LWF program, which ultimately resulted in the ACF program, involved "a considerable investment * * * toward studying advanced technological developments, with particular emphasis on * * * mandates for simplification and the elimination of frills. This extensive stud, including testing, was reflected in the surviving F-16 and F-17 designs * * *." How this LWF technology was utilized in the F-17 is explained by MDC as follows:

The MDC/(Northrop) teaming agreement assured that LWF prototype technology and cost saving would be incorporated in an NACF * * *. Cost benefits of \$125 million flowed from the use of prior YF-17/J101 development effort and inured to the benefit of the Model 207. Moreover, because the Model 207 drew heavily from the extensive YF-17 and J101 design, development and test efforts, the F-18 NACF was able to incorporate the excellent high-lift aerodynamics of the unswept wing with leading edge extension; the outstanding handling qualities made possible through the aerodynamic configuration and the closed-loop electronic control augmentation system with mechanical backup; a new ejection seat which had already been subjected to sled tests; and the J101 (now the F404) engine with its solid development background. Consequently, the F-18 has a demonstrated technological base which substantially reduces the risks otherwise inherent in developing a new aircraft. * * *

Furthermore, the savings available through achieving commonality with technology is also indicated in the following statement in the Navy's report filed in response to the protest:

"Commonality of hardware" between two aircraft designs would naturally be greatest if each and every component of the two models was identical—its engines, landing gear, armament, electronics, flight control systems and even rivets. "Commonality of technology," on the other hand, could be achieved even though the individual components of the two aircraft were different. For example, their communications equipments could be different in size, operate at different frequencies and use different antennae, but their internal designs could share a "commonality of technology" because they both employed sub-miniaturized components. "Commonality of technology" could also be manifested in the use of metal parts with different shapes and sizes, but whose metallurgical properties were similar in the common technology employed in their smelting, milling, and forming operations. "Commonality of technology" produced the greatest savings in time and money in the early research and development phases of a program, whereas "commonality of hardware" has the greatest beneficial effect in reducing later production and support costs.

In addition, we note that approximately \$114 million was devoted to the demonstration phase of the LWF program, with about 60 percent of that amount being spent on the YF-17. We think the Navy acted properly in attempting to utilize in its own program the technology and hardware that resulted from that expenditure.

With regard to the assertion that DOD officials led LTV to believe that its interpretation of the RFQ was correct, LTV states that it was told by the Deputy Secretary of Defense that "commonality with the Air Force plane and cost would determine the Navy's selection." LTV also claims that it was told by the Deputy Chief of Naval Operations that, in view of H.R. Report No. 93-1363, "the Navy was limited to selecting a derivative of the aircraft selected by the Air Force."

The Navy strongly denies these allegations. The Navy also advises that the meeting between the Deputy Secretary and the NACF contractors was held on October 16, 1974, *inter alia*, to answer any questions regarding the competition. It further advises that a summary of the notes of the meeting reveals that at "no time did the Deputy Secretary state or imply that the NACF must be a derivative of the selected ACF, or that performance was of lesser importance than commonality and cost, or that the evaluation criteria were other than those clearly set forth in the solicitation."

While both the Navy and LTV have submitted differing statements as to what they believe occurred at these meetings, our record does not indicate which version is correct. See *Bromley Contracting Co. Inc.*, B-180169, December 13, 1974, 74-2 CPD 336; *Phelps Protection Systems, Inc.*, B-181148, November 7, 1974, 74-2 CPD 244. We do note, however, that LTV's proposals reflected an awareness that offerors were not restricted to achieving commonality only with the F-16. For example, LTV's proposed model 1602 was so different from the F-16 that the Navy suggests that it "might more accurately be described as an entirely new aircraft design both as to airframe and engine." Also, the LTV 1600/1801 proposal contained the following statement:

... One of the keys of the feasibility of a Navy derivative of the ACF is the preservation of "technological and hardware commonality" in transitioning from ACF to NFA. A successful transition process is more directly related to "technology commonality" than to "hardware commonality." The single ingredient that most directly determines the ultimate degree of program success is the validity of the technology base. If the technology base is not sound and thoroughly established early in the program, no amount of "hardware commonality" can make up for this deficiency.

In light of the above discussion it is our conclusion that the concept of "commonality" as that term was used in the RFQ/RFP clearly referred to the technology and hardware of the LWF and ACF pro-

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grams and not solely to the F-16 design. With respect to the evaluation of commonality itself, our review indicates that it took into account these three aspects: (1) the extent of commonality of the offeror's model with the F-16; (2) commonality of the offeror's model with LWF hardware and technology; and (3) commonality with regard to the use of Government Furnished Equipment and Navy Ground Support Equipment. In conducting this evaluation, the Navy requested, and the offerors provided, individual commonality estimates of the respective NACF designs with their prior ACF designs. The MDC design obviously had little hardware commonality with the F-16, and the Navy reports that this was taken into consideration when it evaluated LTV far higher than MDC on this criterion. This was consistent with the provisions of the RFQ, and it thus appears that both offerors were treated equally and fairly in this regard.

Engines

LTV argues that it was also prejudiced by the Navy's alleged failure to act properly in considering the contractor's proposed engine selections. It argues that four engines (J101, F100, F101, F401) were called out by the RFQ as acceptable and that the MDC design was selected with an engine (F404) not listed in the solicitation. Furthermore, the protester believes that evaluation criterion F placed emphasis on the design which employed "demonstrated technology" and represented the "lower developmental risk against development cost and schedule milestones," and that weight was therefore to be accorded engines which were in the final development stage. LTV contends that its position is consistent with the Navy's desire to determine the optimum engine and airframe which would lead to the earliest possible operational engine. Since LTV considers the selected engine to be an untested "paper" engine, it questions the selection of the MDC design.

The Navy asserts that under the RFQ, MDC had discretion to propose whatever engine it desired and that the four engines listed in the RFQ only represented what the Navy intended to furnish as Government Furnished Equipment (GFE). Accordingly, it believes MDC did not propose an unauthorized engine. At any rate, argues Navy, the F404 engine represents only a minor modification to the J101 engine and that the change from J101 to F404 is merely a nomenclature change. Accordingly, the Navy asserts that the F404 is much more than a "paper" engine and is still considered to represent low-risk development. In this regard, the Navy points out that MDC's proposed engine is similar to LTV proposed engine in that LTV's designs also relied on growth versions of the engines listed in the

RFQ. The Navy also states that its calculations establish the F404 to be more than adequate for its designed task.

The RFQ contained a list of equipment, including the four engines referred to above, which would be GFE if used by the contractor. However, an enclosure to a supplemental Air Force letter which provided "corrections, classifications or changes" to the RFQ, under the heading "Acceptable Engines," stated that "The following baseline engines will be considered acceptable when modified to meet Navy requirements * * *." The engines were identified as the F100-PW-100, the F101-GE-100, the F401-PW-400A, and the J101-GE-100.

MDC proposed J101 engines. It first proposed a J101/J7A7; it subsequently proposed a J101/J7A8 engine. This latter engine was ultimately accepted by the Navy and redesignated the F404-GE-400.

Our review indicates that this F404 engine is not a new "paper" engine, but with certain modifications, is the basic J101 engine which was developed for use in the F-17. We note that the basic core elements of the J101, consisting of the compressor, combustor, and turbine, remain the same for the F404 except for some minor physical changes. The modifications that are to be made to the J101 involve a .9 inch increase in the fan diameter, the addition of a "mini-mixer," a .4 inch increase to the diameter of the low pressure turbine, a 2.4 inch increase in the diameter of the afterburner casing, and an increase of 8.1 inches in the engine's nozzle. These modifications are intended to increase the thrust available from the basic J101 which is necessitated by the increased weight of the F-18 as compared with the F-17. Since, in our view, the F404 is a modified version of the J101, we find that LTV's claim that it was prejudiced by the engine selection is without merit.

Finally, LTV believes the Navy may have improperly evaluated engine upgrading costs since the Navy allegedly estimated that modifying the J101 to the F404 would only cost \$12 million while the "marinizing" cost of the F100 would be \$300 million. The protester's analysis of the F404 costs, however, does not include the basic cost involved with upgrading the J101 from the YJ101, which was estimated to be approximately \$264.2 million (1975 dollars). Since the Navy estimate for upgrading the F404 is thus approximately \$276.2 million (1975 dollars), there appears to be no basis for questioning this evaluation.

Cost

LTV also challenges the Navy's selection on the ground that the Navy did not properly evaluate cost. LTV asserts that by choosing the F-18 the Navy acted contrary to the selection criteria because the F-18 "will be billions of dollars more costly than the rejected YF-16

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derivatives" as well as more costly than the F-16 and possibly even more costly than the F-14. In addition, LTV asserts its belief that the Navy increased LTV's proposed dollar figures "to arrive at an estimated price hundreds of millions of dollars higher than LTV's estimate" without increasing MDC's figures. LTV also questions the escalation rate used by the Navy in evaluating proposals.

We recognize that the objective of this procurement was the development of a low cost fighter that would be an acceptable alternative to the F-14. However, in considering this protest it is not our function to examine the various alternatives available to the Navy or the cost effectiveness of the alternative it selected. Rather, we are concerned solely with the legality and propriety of the Navy's selection decision in view of the applicable law and regulations. Accordingly, while we have not evaluated the cost effectiveness of the Navy's selection, we have reviewed the Navy's actions to determine if the cost evaluation was conducted in accordance with proper procedures and the established selection criteria. For the reasons discussed below, we believe the Navy's cost evaluation met those standards.

The solicitation indicated that the equally weighted areas of cost and performance would be the paramount evaluation items. With regard to cost, credibility of proposed costs was listed as the primary concern. The solicitation further indicated that the evaluation would take into account all costs related to design, development and production.

In evaluating proposed costs, the Navy developed its own independent estimates for the MDC entry and each of the LTV entries. In arriving at its estimates, the Navy utilized both parametric pricing and analogous system techniques. Parametric cost estimating involves a process in which the cost of an item is estimated by relating its cost to specific physical and/or performance characteristics. The relationship is based on empirical data observed on similar items. The analogous technique relies on cost experience with analogous systems. In addition, the Navy considered each offeror's "business base and organizational structure, the anticipated higher costs of the increased reliability and maintainability requirements in the NACF program over prior aircraft programs, and those lower costs which would flow from ACF 'commonality.'"

The Navy estimates for development of the LTV designs were substantially higher than LTV's proposed costs, while the Navy estimate for the MDC entry was only slightly higher than MDC's proposed costs. Thus, while the estimated costs of the MDC design were somewhat higher than the estimated costs of each of the LTV designs, the Navy regarded the MDC proposal as the more acceptable one, particularly in view of the technical superiority of the MDC design. As

the Navy puts it, " * * * while cost was of equal importance, it was not determinative due to the F-18's vast superiority in performance over all of the F-16 derivatives."

The Navy's use of estimates in this case was entirely consistent with sound procurement practices. We have repeatedly observed "that the award of cost-reimbursement contracts requires procurement personnel to exercise informed judgments as to whether submitted proposals are realistic concerning the proposed costs and technical approach involved," 50 Comp. Gen. 300, 410, *supra*, and that it is proper to use independent Government cost estimates as an aid in determining the reasonableness and realism of cost and technical approaches. *Dynalec-tron Corporation; Lockheed Electronics Company, Inc.*, 54 Comp. Gen. 562 (1975), 75-1 CPD 17; *Raytheon Company*, 54 *id.* 160 (1974), 74-2 CPD 137, and cases cited therein. Furthermore, although LTV suggests that the use of parametric pricing techniques is inappropriate, we have recognized that it is an acceptable method for estimating costs, see e.g., *Raytheon Company, supra*, and we think the decision to utilize such a technique is within the sound discretion of the procuring activity. *Raytheon Company, supra; Vinnell Corporation*, B-180587, October 8, 1974, 74-2 CPD 190; B-176311(1), October 26, 1973.

The fact that the MDC design was estimated to cost more than any of the LTV designs does not indicate that the Navy acted improperly in selecting the MDC proposal. Under the evaluation criteria, cost was not to be controlling, but was to be considered along with performance and certain other, less important, factors. The record here clearly establishes that the Navy considered the estimated cost differences among the proposals, but regarded the cost difference between the MDC proposal and the LTV proposals to be completely offset by the technical difference between LTV's designs and the MDC design. It is, of course, well established that agencies have the discretion to award a negotiated contract on the basis of a proposal's technical superiority notwithstanding that proposal's higher cost. 52 Comp. Gen. 198, 211 (1972); 50 *id.* 113 (1970); *Stephen J. Hall & Associates, et al.*, B-180440, B-132740, July 10, 1974, 74-2 CPD 17. (We also note that the Navy regarded each of LTV's designs to be unsuitable and could have treated LTV's proposals as unacceptable for technical reasons alone, thereby negating any requirement to consider cost. See 53 Comp. Gen. 1 (1973); 52 *id.* 382 (1972)). Accordingly, in light of the evaluation criteria applicable to this procurement, the Navy's selection of the higher-priced proposal was not improper.

With regard to LTV's claim that the Navy increased LTV's proposed costs, it is clear from our review that the Navy did not revise LTV's costs, but relied on its own estimates of what those costs would

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actually be. As indicated above, we have no basis for challenging the Navy's estimating techniques. With regard to the escalation factors, the proposals of both offerors reflect the escalation rates used by the Air Force in evaluation of the F-16 and F-17. However, the Navy felt that those rates were too low and devised its own inflation rates. Our review indicates that the Navy applied these rates uniformly to both the MDC proposal and the LTV proposals. Thus, while the Navy's evaluation apparently resulted in higher estimated costs for the proposals than would have been computed by using Air Force rates, it is clear that both offerors were treated equivalently by the Navy in this regard and that neither offeror was prejudiced thereby.

Necessity to Reopen

LTV also argues that the Navy violated 10 U.S.C. § 2304(g) and ASPR § 3-101(b) because it did not obtain the maximum competition required by those statutory and regulatory provisions. According to LTV, "once the Navy determined that it was not going to select a derivative of the F-16 as the NACF, the Navy was no longer justified in excluding Grumman, Lockheed, Boeing, and others from competing for NACF selection * * * hence the Navy was required to cancel the NACF procurement and to resolicit the entire aerospace industry on an unrestricted basis."

The Navy argues that LTV "has no standing to raise this issue since it knowingly and fully participated in the competition and was not one of those allegedly excluded from the competition." On the substance of the LTV allegation, the Navy claims that its actions were entirely in accord with the "principles governing the competitive source selection process" as those principles are set out in *Hoffman Electronics Corp.*, 54 Comp. Gen. 1107 (1975), 75-1 CPD 395.

In that case, we reviewed the statutory requirement that agencies maximize competition in their procurements of supplies and services, noting that while such competition "is the cornerstone of the competitive system * * * restrictions of competition may be imposed when the legitimate needs of the agency so require." Furthermore, we upheld the use of dual prototype contracting and the restricting of competition for a follow-on production contract to the two prototype development contractors, since it appeared that under the circumstances the restriction was both legitimate and reasonable. See also *Bell Aerospace Company*, 55 Comp. Gen. 244 (1975). LTV does not disagree with the *Hoffman* case, and agrees that the Navy did not act improperly in initially soliciting (through the Air Force) only General Dynamics and Northrop for its NACF requirement. However, LTV argues that the continuance of this restriction was not reasonable and

legitimate because the Navy, when it decided it could not or would not select an F-16 derivative, abandoned its initial requirement for commonality.

On the Navy's first point, we might well agree that LTV is not in a position to raise this issue if its concern was directed entirely toward the exclusion of other firms from the competition. However, LTV's argument also goes to the restriction which LTV believed was imposed on it by the RFQ, as indicated by its assertion that the Navy had no "lawful justification for restricting competition and thereby denying the majority of airborne manufacturers the opportunity to compete for NACF selection and denying LTV the opportunity to submit a design not derived from the F-16." [Italic supplied.] Thus, LTV essentially argues that it and the aerospace industry in general should have been given an opportunity to compete for the NACF unencumbered by any requirement to achieve commonality with another airplane.

This argument, however, is predicated on LTV's erroneous belief that the solicitation's commonality provisions limited selection to a derivative of the design selected by the Air Force. As discussed above, we have concluded that the commonality requirement was not so limited and that in fact the Navy's selection was consistent with a proper reading of the RFQ/RFP provisions. Accordingly, we find no basis for concluding that the Navy unduly restricted competition in this case.

CONCLUSION

For the various reasons discussed above, we have concluded that the Navy's actions were not illegal or improper and that therefore the protest must be denied.

As indicated in the Introduction section, the Congress has manifested significant interest in DOD's LWF/ACF programs and has closely monitored the Navy's attempts to develop a lightweight, low cost fighter that could operate effectively from aircraft carriers. The statement in the Conference Report on the 1975 DOD Appropriation Act that "future funding is to be contingent upon the capability of the Navy to produce a derivative of the selected Air Force Air Combat Fighter design" suggests that the Congress will be closely scrutinizing the Navy's choice before full-scale development funds will be provided. Thus, the ultimate determination regarding further F-18 development has yet to be made.

[B-188607]

Contracts—Specifications—Failure to Furnish Something Required—Information—Catalog Number and Manufacturer

Requirement that bidders submit manufacturer's specifications and indicate on the bid the manufacturer and catalog number of item offered is informational in

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incident to holding its Technical Tripartite Textile Conference in Washington." Of this amount, \$5,000 was made available for expenditure by the Secretary of Labor.

It is understood from your submission that the notice of appointment given to each person designated to attend this conference contained a statement as follows: "Your certificate of designation is transmitted herewith on the understanding that this appointment will entail no expense to the Department of State." Also, in your letter of April 28, 1937, to The Honorable, The Secretary of Labor, it is stated that it is not usual to pay travel expenses or per diem to members of an American delegation to an international conference held in Washington, D. C.

In view of the above facts and the terms of the appropriation made in Public Resolution No. 13, approved March 15, 1937, I am constrained to hold that the appropriation made in the act of May 15, 1936, 49 Stat. 1316, is not available for the payment of the 10 claims heretofore submitted or any similar claims which may be submitted by the remaining 40 members of the delegation.

(A-55141)

DISTRICT OF COLUMBIA—EMPLOYEES OF PUBLIC SCHOOLS—
CLASSIFICATION OF POSITIONS

The Board of Education of the District of Columbia being vested with control of the public schools and empowered to determine all questions of general policy relating to the schools, is authorized, upon recommendation of the Superintendent of Schools, to reclassify positions of "directors of special subjects" and place such positions in the class of "heads of departments" on the basis of changed duties, the applicable classification statute, act, June 4, 1924, 43 Stat. 307, not describing the duties and responsibilities of the several classes of positions here involved other than by title or designation, and not limiting the number of positions that may be placed or allocated in any particular class, and section 6 of the act, making original assignments of personnel to the several classes, not precluding subsequent adjustments based on changes in duties.

Amounts of individual items in the estimates presented to the Congress on the basis of which a lump sum appropriation is enacted, are not binding on administrative officers unless carried into the appropriation act.

Acting Comptroller General Elliott to the President, Board of Commissioners, District of Columbia, August 18, 1937:

Your letter of August 2, 1937, is as follows:

The Commissioners of the District of Columbia, acting upon the request of the Auditor of the District, ask your decision on the question hereinafter presented.

There has been received by the Auditor of the District an order issued by the Superintendent of Public Schools "under the provisions of the regulations for the government of the public schools of the District of Columbia", which proposes to change the class designation and salary range of seven positions now carried as directors of special subjects to be heads of departments.

The salaries of the positions of directors of special subjects and heads of departments are paid from the appropriation contained in the District of Columbia Appropriation Act for the fiscal year 1938 under the head of Public Schools, District of Columbia, reading as follows:

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"For personal services of administrative and supervisory officers in accordance with the act fixing and regulating the salaries of teachers, school officers, and other employees of the Board of Education of the District of Columbia, approved June 4, 1924 (43 Stat., pp. 367-373), including salaries of presidents of teachers colleges in the salary schedule for first assistant superintendents, \$450,000."

The Budget estimate submitted to Congress for this appropriation for the fiscal year 1933 amounted to \$602,000. The appropriation, as shown above, is \$653,500. Reference to the House Subcommittee on Appropriations in charge of the District bill for 1933 discloses the following statement dealing with the above quoted appropriation:

"For this purpose there is recommended \$653,500, which is \$5,505 less than the current appropriation and a reduction of \$8,200 under the estimates. Of this latter decrease, \$5,000 is accounted for by the application of additional lapses in salaries in that amount and \$3,200 is due to the denial of one assistant principal for the Armstrong Senior High School."

Reference to the Budget estimate as submitted to Congress, and to the tabulated statement following that estimate, shows with respect to directors of special subjects and heads of departments that 17 such directors received salaries in the fiscal year 1933, 15 were carried in the fiscal year 1932, and the Budget estimate provided for 15 for the fiscal year 1933.

For heads of departments, the tabulated statement shows that 14 such positions were carried in 1932 and 1937 and a similar number provided for in the Budget estimate for 1933.

It will be noted that under the appropriation language salaries must be paid in accordance with the provisions of the act of June 4, 1924 (43 Stat., pp. 367-373). That act provides that on and after July 1, 1924, the salaries of teachers, school officers and other employees of the Board of Education shall be at the rates fixed by the several classes named therein. Class 10 of article 11 provides for directors of special subjects and departments, with a basic salary of \$3,200 per annum and an annual increase of \$100 for three years, or until a maximum salary of \$3,500 per year is reached. Class 11 under the same article provides for heads of departments and assistant principals, with a basic salary of \$3,200 per year and an annual increase of \$100 for five years, or until a maximum salary of \$3,700 per year is reached. The minimum salary of both classes is identical, namely, \$3,200 per year, but the maximum salary of heads of departments and assistant principals is \$200 greater than that for directors of special subjects and departments. The several directors whom it is now proposed to make heads of departments are each receiving the maximum salary of class 10.

Section 2 of the act of June 4, 1924, provides—

"That the Board of Education is hereby authorized, empowered, and directed, on recommendation of the superintendent of schools, to classify and assign all teachers, school officers, and other employees to the salary classes and positions in the foregoing salary schedule."

Section 6 provides that teachers, school officers, and other employees in the service of the Board of Education on July 1, 1924, shall be placed in the salary classes and positions of the foregoing schedule, as follows, and in subsection (1) it is provided:

"From directors of drawing, physical culture, music, domestic science, domestic art, kindergartens, and primary instruction; assistant directors of drawing, physical culture, music, domestic science, domestic art, kindergartens, and primary instruction; and assistant supervisor of manual training under the act of June 20, 1906, as amended, to class 10 of the foregoing schedule."

In subsection (c) of section 6, it is provided:

"From heads of departments in high and manual-training high schools, class 6, group B; assistant principals; and assistant principals (deans of girls) under the act of June 20, 1906, as amended, to class 11 of the foregoing schedule."

And in section 18 of the act of June 4, 1924, it is provided that the rates of salary therein designated shall become effective on the 1st day of July 1924, and that the estimates of the expenditures for the operation of the public school system of the District of Columbia shall thereafter be prepared in conformity with the classification and compensation of educational employees therein provided.

In view of the foregoing provisions of the act of June 4, 1924, has the superintendent of public schools or the board of education legal authority to re-

classify positions definitely fixed special subjects in class 10, and of departments? The action of reclassification appears to be of doubtful.

There is transmitted herewith schools addressed to the board of is fully self-explanatory of the this reclassification. It is not information contained in that sta-

The Commissioners request of the seven directors of sp the public schools and occupied J. E. Zearfodd (Zearfoss), direc director of music; Ethel Bray, o of drawing; D. L. Miller, direc director of music, may be reclass or by the board of education fro article 11, of the act of June 4, class 11, article 11, of said act.

The statement of the sup your letter, shows that thro the school system, primarily high schools in which the co the courses of study of bot high schools as previously n ments, formerly limited to seven designated directors elementary schools, have b in all three classes of scho high; in other words, that than horizontal supervision to the seven positions here states:

The directors of special subje the responsibility of supervisin courses of study, and in genera their respective subjects in acco methods of teaching, and prin Board of Education define the language similar to the langua ments. The administrative cha of directors of special subjects elementary schools through ju high schools. Today a prepo special subjects, who have pet of department, is similar to th of the rules of the board of edu tors of special subjects and the confirm this assertion.

The act of June 4, 1924, tions in the public school - certain exceptions not her duties and responsibilities than by title or designati on the number of positio:

classify positions definitely fixed by the act of June 4, 1924, as directors of special subjects in class 10, and now place such positions in class 11 as heads of departments? The action of the school authorities in ordering this reclassification appears to be of doubtful legality.

There is transmitted herewith a statement of the superintendent of public schools addressed to the board of education under date of July 1, 1937, which is fully self-explanatory of the viewpoint of the school authorities in making this reclassification. It is not necessary to repeat in this letter any part of the information contained in that statement.

The Commissioners request your decision to the question whether the positions of the seven directors of special subjects now carried on the pay rolls of the public schools and occupied by E. S. Jacobs, director of home economics; J. E. Zearfodd [Zearfoss], director of manual training; Edwin N. C. Barnes, director of music; Ethel Bray, director of drawing; R. N. Hampton, director of drawing; D. I. Miller, director of home economics; and A. H. Johnson, director of music, may be reclassified by the superintendent of public schools or by the board of education from directors of special subjects under class 10, article II, of the act of June 4, 1924, and made heads of departments under class 11, article II, of said act.

The statement of the superintendent of schools, transmitted with your letter, shows that through a gradual change in the set-up of the school system, primarily by reason of the development of junior high schools in which the courses of study now embrace a portion of the courses of study of both the elementary schools and the senior high schools as previously maintained, the duties of heads of departments, formerly limited to high schools, as well as the duties of the seven designated directors of special subjects, formerly limited to elementary schools, have been so modified that each embraces work in all three classes of schools—elementary, junior high, and senior high; in other words, that the general principle of vertical rather than horizontal supervision now prevails. With particular reference to the seven positions here involved, the superintendent of schools states:

The directors of special subjects are, like heads of departments, charged with the responsibility of supervising methods of teaching, outlining, and improving courses of study, and in general responsible for the progressive development of their respective subjects in accordance with the most approved courses of study, methods of teaching, and principles of education. In short, the rules of the Board of Education define the functions of the directors of special subjects in language similar to the language describing the functions of heads of departments. The administrative changes which have taken place in the assignments of directors of special subjects have resulted in extending their functions from elementary schools through junior high schools, vocational schools, and senior high schools. Today a preponderance of the work of the seven directors of special subjects, who have petitioned for reclassification to the status of head of department, is similar to the functions of heads of departments. A reading of the rules of the board of education regarding the general functions of directors of special subjects and the general functions of heads of departments will confirm this assertion.

The act of June 4, 1924, 43 Stat. 367, is a classification act for positions in the public school system of the District of Columbia. With certain exceptions not here involved, the statute does not describe the duties and responsibilities of the several classes of positions other than by title or designation, nor is there a limitation in the statute on the number of positions that may be placed or allocated in any

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particular class. The amounts of individual items in the estimates presented to the Congress on the basis of which a lump sum appropriation is enacted are not binding on administrative officers unless carried into the appropriation act itself.

Section 2 of the act quoted in your letter authorized, empowered, and directed the Board of Education "to classify and assign" the school personnel "to the salary classes and positions" provided by the act, and section 3 of the act provides:

That the board of education, on recommendation of the superintendent of schools, is authorized, empowered, and directed to assign, at the time of appointment, teachers, school officers, or other employees hereafter appointed to the salary classes and positions in the foregoing salary schedule in accordance with previous experience, eligibility qualifications possessed, and the character of the duties to be performed by such persons: . . .

Section 6 of the act, quoted in your letter, related only to the initial allocation of positions on July 1, 1924, and would not operate to preclude further adjustments based on a change in duties.

Section 2 of the act of June 20, 1906, 34 Stat. 316, vests the control of the public schools of the District of Columbia in a board of education and provides that the board shall determine all questions of general policy relating to the schools. It is understood from your submission that the board has approved an order recommended by the superintendent as follows:

ORDER: That whenever the work of a director of a special subject in the day elementary schools encompasses the complete responsibility for the supervision of that subject in elementary schools, junior high schools, vocational schools, and senior high schools, said director may, subject to the availability of funds and a satisfactory efficiency rating be classified as a head of department in the day schools.

If such order has been approved by the board and, pursuant thereto, the seven positions referred to have been allocated as heads of department in the day schools, class 11, this office would not be required to object to salary payments in accordance therewith.

You are advised accordingly.

(A-51081)

CONTRACTS—FINALITY OF ADMINISTRATIVE FINDINGS OF FACT—EQUITABLE CONSIDERATIONS

Where contract for construction of a levee provided that the decision of the contracting officer or his representative should be final and conclusive on disputes concerning questions of fact, subject to written appeal to the head of the department within 30 days, and contractor failed to appeal to the Secretary of War within the time limited, such decisions of contracting officer are conclusive on the contractor and are not for review by the General Accounting Office or any officer of the Government.

The dismissal without cause and without prejudice of a proceeding in equity brought on behalf of the United States for a receiver and the imposition of a preferred lien against the assets of the defaulting Government contractor in the process of collecting a net balance of indebtedness found due from

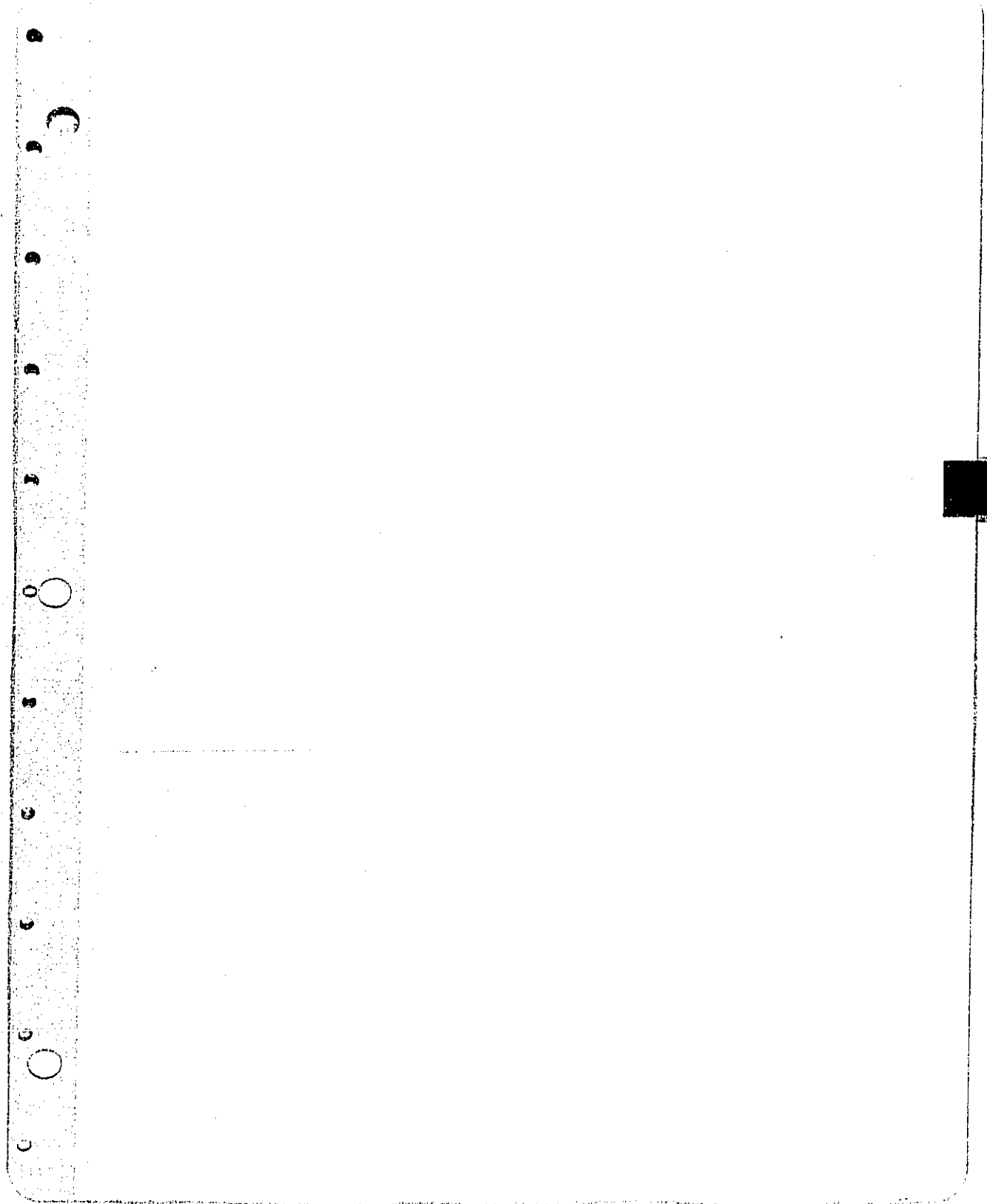
said contractor to the United States on the ground for reconsideration and settlement of the form issued upon the basis of circumstances making them final. A defaulting Government contractor work it improperly opportunity to present its liability proceeding brought against recover the net balance certification 236, Revised Statutes, Government reconsidered in the General Equities which not only conclusions made conclusive on the counsel failed to submit to it.

Acting Comptroller General Elliot

A letter dated July 10, 1924, copies of the documents, has been received from William M. Hall, requesting reconsideration of settlement of 1924, which was made pursuant to a legal decision of the General of the United States based upon formal findings of indebtedness as between your office and War Department by duly authorized War Department W-1106 eng 1389, dated June 10, 1924, in connection with certain levee work under advertised specifications—wherein the contractor failed to comply with said formal contract—as submitted.

There has been presented a request for reconsideration of the settlement and forever discharge thereof by virtue of the said contract. The amount thereon in the sum of \$16,477.57 claimed by you as payment for all work completed under your letter of August 26, 1924, is not in the Army, contracting officer at Vicksburg.

The records submitted and your apparently have been reviewed and had the benefit of advice thereon. In disputes with administrative presentation and argument of the War Department and it is believed that the facts of your contentions are in behalf to numerous Members.



[B-201260]

Appropriations — Deficiencies — Anti-Deficiency Act — Violations—Statutory Restrictions—Violation

Incurring obligation for purpose for which funds are specifically made not available by appropriation act constitutes violation of Antideficiency Act. By incurring obligation for administrative expenses to pay overtime to individual in excess of \$20,000, for which purpose funds were not available under fiscal year 1980 appropriation act, Customs Service violated Antideficiency Act.

Matter of: Customs Service Payment of Overtime Pay in Excess of Limit in Appropriation Act, May 6, 1981:

The Commissioner of Customs has requested our opinion as to whether the Customs Service's violation of a proviso in its fiscal year 1980 appropriation act relating to the payment of overtime pay also constitutes a violation of the so-called Antideficiency Act, 31 U.S.C. § 665 (1976). The proviso in question, which is attached to the appropriation making funds available for the necessary expenses of the Customs Service, states:

Provided, That none of the funds made available by this Act shall be available for administrative expenses to pay any employee overtime pay in an amount in excess of \$20,000.

The Treasury Department Appropriations Act, 1980, Pub. L. No. 96-74, 93 Stat. 550, 560.

For the reasons indicated below we conclude that by incurring an obligation for administrative expenses to pay overtime compensation to an individual in excess of \$20,000 in fiscal year 1980, the Customs Service has violated the Antideficiency Act.

Overtime pay for customs officers and employees is authorized by 19 U.S.C. § 267 (1976). Under this provision, the overtime compensation is ultimately paid by the master, owner, agent, or consignee of the vessel or vehicle which requires the overtime service.

In fiscal year 1980 one customs inspector was inadvertently permitted to work an overtime assignment which, when added to his other assignments for the year, entitled him to total overtime compensation of \$20,194.17. The Customs Service paid the inspector for the overtime assignment, including the \$194.17 in excess of \$20,000, and was reimbursed by the user of the overtime services.

The overtime assignment in excess of \$20,000 occurred despite safeguards instituted by the Customs Service to prevent such assignments, being caused by erroneous calculations of the amount of overtime pay that had already been earned by the inspector. The Customs Service has not determined the amount of expenses which it may have incurred in violation of the appropriation act proviso (*i.e.*, the adminis-

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 WILFRED GUTTER & PICKERING

trative expenses of paying the excess \$194.17 in overtime compensation) but estimates that these expenses were minimal.

The so-called Antideficiency Act provides that:

No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein; nor shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law. (31 U.S.C. § 665(a).)

This, and similar statutes,

• • • evidence a plain intent on the part of the Congress to prohibit executive officers, unless otherwise authorized by law, from making contracts involving the Government in obligations for expenditures or liabilities beyond those contemplated and authorized for the period of availability of and within the amount of the appropriation under which they are made; to keep all the departments of the Government, in the matter of incurring obligations for expenditures, within the limits and purposes of appropriations annually provided for conducting their lawful functions, and to prohibit any officer or employee of the Government from involving the Government in any contract or other obligation for the payment of money for any purpose, in advance of appropriations made for such purpose • • • (42 Comp. Gen. 272, 275 (1902); see B-107841, March 3, 1980.)

The proviso in the Customs Service appropriation act limits the availability of funds for the expenses of paying overtime compensation. In other words, under the language of the proviso Congress has not appropriated funds for the administrative expenses of paying overtime compensation to any individual in excess of \$20,000 in one year.

When an appropriation act specifies that an agency's appropriation is not available for a designated purpose, and the agency has no other funds available for that purpose, any officer of the agency who authorizes an obligation or expenditure of agency funds for that purpose violates the Antideficiency Act. Since the Congress has not appropriated funds for the designated purpose, the obligation may be viewed either as being in excess of the amount (zero) available for that purpose or as in advance of appropriations made for that purpose. In either case the Antideficiency Act is violated.

The Commissioner has enclosed a memorandum from the Chief Counsel of the U.S. Customs Service giving his opinion that violation of the appropriation act prohibition does not constitute violation of the Antideficiency Act. In his memorandum the Chief Counsel examines decisions of the Attorney General and of the Comptroller General and states that the Antideficiency Act was intended only to control deficiency spending and obligations beyond available appropriations. He concludes:

We believe the Antideficiency Act should be viewed as restricting the obligation of funds which are not appropriated and thus not available, requiring Congress to appropriate funds in the future to meet the obligation, while not deal-

ing with the circumstance of the obligation of available funds contrary to a statutory limitation. * * *

We cannot agree with the Chief Counsel's conclusion. In our opinion the Antideficiency Act prohibits not only expenditures which exceed the amount appropriated, but also expenditures which violate statutory restrictions or limitations on obligations or spending.

We conclude that by incurring an obligation for administrative expenses to pay overtime compensation in excess of \$20,000 to an individual, the Customs Service has violated the Antideficiency Act.

[B-201708]

Appointments—Delay—Backpay—Entitlement—Age Limitations

Individual's appointment as Deputy U.S. Marshal was delayed after agency sought to remove his name from list of eligibles on grounds he was over agency age limitation for appointment. Although Civil Service Commission ruled individual must be considered for appointment, agency retained discretion to appoint. Since individual has no vested right to appointment, he is not entitled to retroactive appointment, backpay, or other benefits under the Back Pay Act.

Matter of: Michael Kovalovsky—Claim for backpay and other benefits incident to delayed appointment, May 6, 1981:

ISSUE

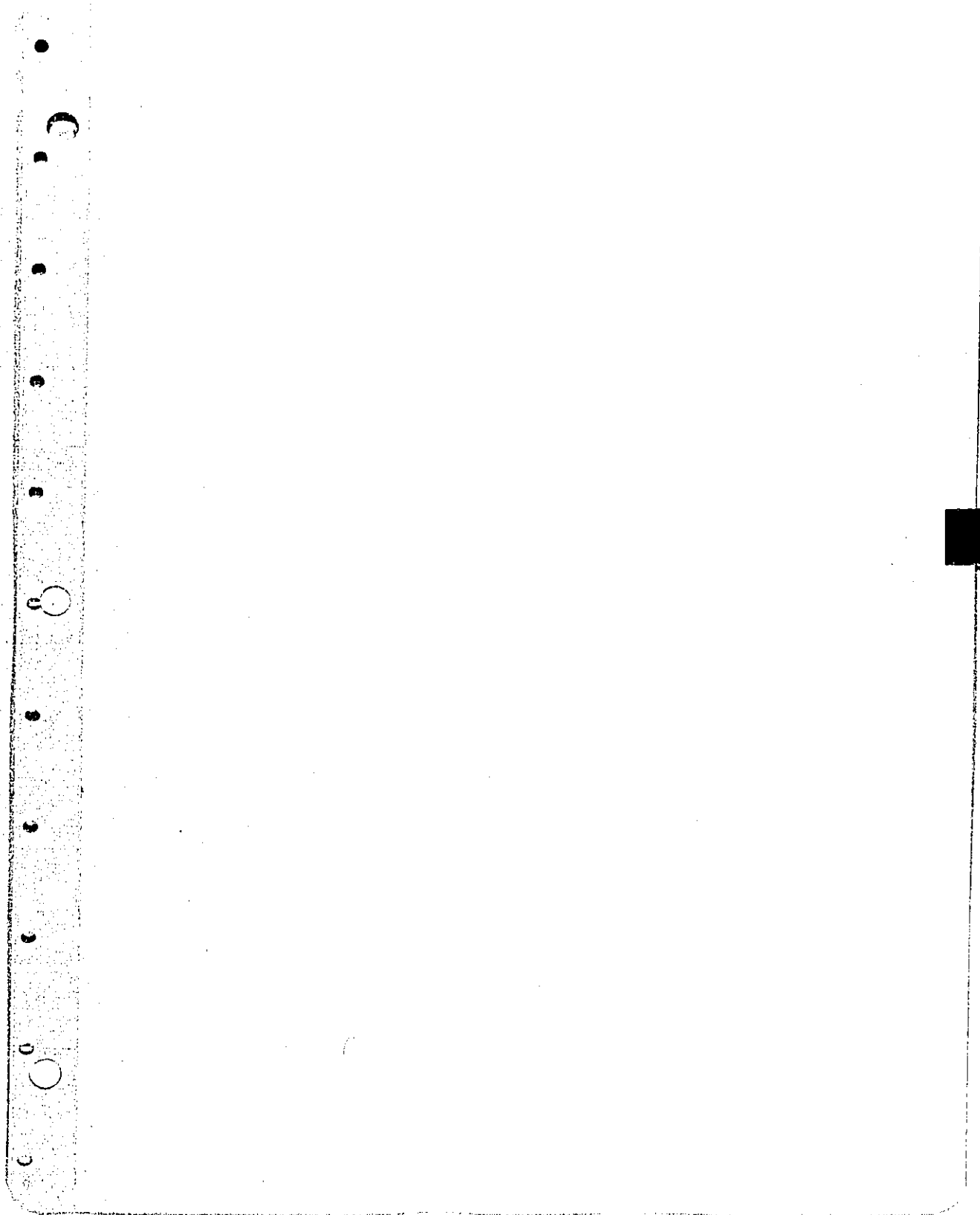
The issue in this decision is whether an applicant for employment with the U.S. Marshals Service is entitled to backpay and other benefits where the agency erroneously applied a maximum age limitation on appointments and delayed his appointment nearly 2 years. We hold that the employee is not entitled to a retroactive appointment and backpay under the Back Pay Act, 5 U.S.C. § 5598, where the agency retained the discretion to appoint.

BACKGROUND

This decision is in response to a request from the American Federation of Government Employees (union) concerning the claim of Mr. Michael Kovalovsky for backpay and other benefits incident to his delayed appointment as a Deputy U.S. Marshal. This decision has been handled as a labor-relations matter under our procedures contained in 4 CFR Part 21 (1980), as amended in 45 Fed. Reg. 55689, August 21, 1980, and in this regard we have received comments on this matter from the U.S. Marshals Service (agency) and the Office of Personnel Management (OPM).

The request from the union states that Mr. Kovalovsky was tested by the Civil Service Commission (now Office of Personnel Management) in 1973 and that his name appeared on a certificate of eligibles

LIBRARY
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[B-197289]

**Appropriations—Obligation—Printing and Binding Requisitions—
Performance Continuing Beyond Fiscal Year**

Fact that performance under Requisition for Printing and Binding extends over more than one fiscal year does not mean payments are to be split among fiscal years on basis of services actually performed. General rule is that payments under Government contracts are charged to fiscal year appropriation current at time legal obligation arises.

Appropriations—Obligation—Bona Fide Needs Restrictions

Printing and Binding Requisition, accompanied by copy or specifications sufficient to allow Government Printing Office to proceed with job, creates valid obligation if need for printing exists at time order is submitted.

**Matter of: Obligation of Appropriation for Printing—Commission
of Fine Arts, April 14, 1980:**

An authorized certifying officer of the Department of the Interior, acting as fiscal officer for the Commission of Fine Arts under an agreement between the Department and the Commission, has requested our decision on the fiscal year appropriation(s) to be charged for the costs of publication by the Commission of its book "Sixteenth Street Architecture, Volume I," which was printed by the Government Printing Office (GPO). According to the inquiry, although printing of the book was initially ordered by the Commission in fiscal year 1977, the Commission has attempted to obligate part of its fiscal year 1977, 1978, and 1979 appropriations for the work.

The certifying officer states his belief that the entire cost of the printing job should have been charged against the Commission's fiscal year 1977 appropriation. The Commission, on the other hand, asserts that costs should be distributed by fiscal year based on the actual incurrence of expenses by GPO and the availability of appropriated funds for printing.

For the reasons indicated below, we agree with the certifying officer that the entire cost of printing "Sixteenth Street Architecture" should have been charged to the Commission's fiscal year 1977 appropriation.

On August 23, 1977, the Commission submitted to the Public Printer a Printing and Binding Requisition (Standard Form 1), designated Requisition No. 77-18. The requisition ordered the printing of 2500 copies of "Sixteenth Street Architecture, Volume I." The printing was to be charged to the fiscal year 1977 appropriation, Salaries and Expenses, Commission of Fine Arts. The requisition order was accompanied by the Commission's manuscript for the book.

By letter of September 13, 1977, to the predecessor of the current certifying officer, the Secretary of the Commission requested that \$14,000 out of the Commission's fiscal year 1977 appropriation be ob-

ligated for the printing of the book. The letter indicated that the GPO had given the Commission a rough estimate for the entire job of about \$21,000.

On September 29, 1978, the Commission submitted a second Printing and Binding Requisition to the GPO, designated Requisition No. 73-23. This requisition again ordered the printing of 2500 copies of "Sixteenth Street Architecture, Volume I." It indicated that the job was to be charged to the fiscal year 1978 appropriation, Salaries and Expenses, Commission of Fine Arts. At the bottom of the form were hand-written the word "continuing requisition to Req. —."

In a memorandum to the certifying officer dated September 29, 1978, the Secretary of the Commission requested that \$13,000 of the Commission's fiscal year 1978 appropriation be obligated for the printing job. The memorandum indicated that the GPO had informally advised the Commission that approximately \$13,000 worth of work had been done on the Commission's order in fiscal year 1978. The memorandum was accompanied by a copy of Requisition No. 73-23 and a new informal estimate by the GPO of the total cost of the job, which gave a "ball park estimate" of over \$31,000.

In a letter to the certifying officer, dated August 10, 1979, the Secretary of the Commission requested that \$25,000 of the Commission's fiscal year 1979 appropriation be obligated for the printing of "Sixteenth Street Architecture." The letter indicates that the GPO had informed the Commission that the actual cost of the printing would be about \$40,000.

A GPO invoice, dated October 5, 1979, indicates that the total charge for printing the Commission book was \$39,421. The GPO billed \$20,700 of this amount to Requisition No. 77-18 and \$18,721 to Requisition No. 73-23. In a November 2, 1979, letter to the certifying officer, the Comptroller of GPO stated that the job was billed to the two separate requisitions at the request of the Commission.

As mentioned above, the Commission is of the opinion that the costs of printing "Sixteenth Street Architecture" should be charged against its fiscal year 1977, 1978, and 1979 appropriations in proportion to the amount of work done by GPO in those years. We do not agree. As we stated at 23 Comp. Gen. 370, 371 (1943), the fact that performance under a contract extends over more than one fiscal year does not mean that payments are to be split among the fiscal years on the basis of services actually performed. Rather, the general rule is that payments due under a Government contract are to be charged to the fiscal year appropriation current at the time the legal obligation arose; that is, the fiscal year in which a bona fide need for the goods or services arose and in which a valid contract or agreement was entered

into. *See, e.g.*, B-125444, May 2, 1936; 27 Comp. Gen. 711, 714 (1948); 23 *id.* 370 (1943).

It should be noted that the printing requisition in question was not issued as part of an interagency Economy Act agreement, under 31 U.S.C. § 656, but rather pursuant to the specific authority of 44 U.S.C. § 501. Performance under an Economy Act agreement cannot ordinarily extend beyond the end of the fiscal year of the funds which are being obligated, because these funds must be deobligated at the end of the fiscal year to the extent that performance has not been completed. *See* 31 U.S.C. § 656-1 (1976); 58 Comp. Gen. 471, 472-73 (1979).

In the case of printing and binding services performed for a Federal agency by GPO, we have held that when a requisition for printing is accompanied by copy or specifications sufficient for GPO to proceed with the job, and there is a present need for the printing of the ordered publication, the order creates a valid obligation. *See* B-123064, August 23, 1955; 23 Comp. Gen. 82 (1943). The fiscal year appropriation current at the time of the order should be charged for full costs of the printing, notwithstanding the fact that the work may not be completed during that fiscal year. *See id.*

In the present instance, the record shows that Printing and Binding Requisition No. 77-18, submitted to GPO August 23, 1977, contained sufficient specifications and was accompanied by Commission-prepared manuscript so that GPO could proceed with the job. It is also clear that the Commission had a present need for the printing it ordered. It follows that Requisition No. 77-18 created a lawful obligation of fiscal year 1977 funds for the costs of printing "Sixteenth Street Architecture." Although the Commission only recorded an obligation of \$14,000, the actual obligation created was the full cost of the printing job. It also follows that the attempts by the Commission to obligate fiscal year 1978 and 1979 funds for the printing were not effective. The Commission's fiscal year 1978 and 1979 appropriations were not available for the fiscal year 1977 printing order and may not be used to pay for the printing of "Sixteenth Street Architecture."

It is not clear from the record whether the Commission had sufficient unobligated fiscal year 1977 funds available to pay for the printing of "Sixteenth Street Architecture" when it submitted its requisition to GPO. The Commission normally receives a lump sum appropriation for salaries and expenses. Therefore, although the Commission may not have budgeted a sufficient sum for printing, it may have had other funds available to pay for the printing job. However, if the Commission in fact did not have sufficient fiscal year 1977 funds to pay for the printing, two statutory provisions were violated.

First, subsection 1102(b) of title 44 of the United States Code provides:

Printing may not be done for an executive department, independent agency or establishment in a fiscal year in excess of the amount of the appropriation.

Although the meaning of this provision is not entirely clear, it is our opinion that it at least prohibits an agency from requisitioning printing from GPO unless it has sufficient funds available to pay for that printing.

Second, subsection 665(a) of title 31 of the United States Code, part of the so-called "Antideficiency Act," provides:

No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therefor; nor shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law.

In this instance, if the Commission did not have sufficient funds to pay for the printing at the time the printing requisition was submitted to GPO, then the officer ordering the printing has violated this act.

It may be argued that the Antideficiency Act should not be applied to the present situation (1) because GPO printing of documents involves a transaction between two Federal agencies, (2) because the Congress will not be forced to enact a deficiency appropriation to liquidate the Commission's debts to GPO, and (3) because the cost to the United States is the same whether the Commission's appropriation or GPO's revolving fund pay for this printing. However, as we stated at 42 Comp. Gen. 272, 275, one of the purposes of the Antideficiency Act was:

... to keep all the departments of the Government, in the matter of incurring obligations for expenditures, within the limits and purposes of appropriations annually provided for conducting their lawful functions ...

By incurring obligations in excess of available appropriations, the Commission would cause the United States to incur costs greater than the Congress had authorized. If in fact a violation of the Antideficiency Act occurred, the provisions of 31 U.S.C. § 665(i)(2) require that it be reported to the Congress.

[B-196342]

**Customs—Services in Foreign Airports—Recovery of Costs—
Treasury Enforcement Communications System**

Where Customs Service receives no advantage from conducting passenger pre-clearance activity on foreign soil *vis a vis* conducting passenger clearance activities within the United States and pre-clearance activity was initiated at airlines request, results in substantial cost savings to airlines and permits airlines to better use their resources, record supports determination that airlines are primary beneficiaries of pre-clearance service. Therefore, under authority of 31

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-
INDEPENDENT AGENCIES APPROPRIATION BILL, 1984

MAY 24, 1983.—Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

Mr. BOLAND, from the Committee on Appropriations,
submitted the following

REPORT

together with

SUPPLEMENTAL AND DISSENTING VIEWS

[To accompany H.R. 3133]

The Committee on Appropriations submits the following report
in explanation of the accompanying bill making appropriations for
the Department of Housing and Urban Development, and for
sundry independent agencies, boards, commissions, corporations,
and offices for the fiscal year ending September 30, 1984, and for
other purposes.

INDEX TO BILL AND REPORT

	Page number	
	Bill	Report
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Title II—Independent Agencies:		
American Battle Monuments Commission	12	17
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source reductions have begun to erode the Commission's credibility with industry.

At the same time, CPSC is placing increased emphasis on the public information and outreach functions. While information and education activities are clearly an essential tool, the evidence suggests that small, short-term and generalized campaigns are unlikely to motivate changes in consumer behavior that will reduce accidents and injuries. In addition, the effectiveness of CPSC's past, present and planned outreach programs cannot be assessed as such evaluations have been largely abandoned.

Accordingly, the committee directs CPSC to target information and education activities to no more than three campaigns—instead of the nine envisioned in the 1984 budget. These information and education programs should be carried out based on established plans with specific goals and objectives. An evaluation component should be an integral part of each campaign, and at least one evaluation (other than for smoke detectors) must analyze behavioral changes to measure the program's tangible benefits and ultimate success in reducing deaths and injuries.

Resources devoted to information and education in 1984 shall not exceed the historical share of 7 percent of the total CPSC budget. This will insure that the funding increase is devoted to expanding proven efforts in field investigations, enforcement activities, identification of emerging hazards and other research.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

1983 appropriation	\$8,682,000
Estimate, 1984	8,203,000
Recommended in bill	8,203,000

The committee recommends the budget estimate of \$8,203,000 for cemeterial expenses. These funds provide for the operation, maintenance and administration of Arlington National Cemetery and the Soldiers' Home National Cemetery.

As of September 30, 1982, Arlington and Soldiers' Home National Cemeteries contained the remains of 200,757 persons and comprised a total of approximately 628 acres. There are 3,760 interments and inurnments estimated for the current fiscal year and 3,870 for fiscal year 1984.

Of the \$8,203,000 proposed by the committee, \$6,123,000 would be used for the operation and maintenance of Arlington and Soldiers' Home National Cemeteries, including support for 147 workyears and the procurement of necessary operating supplies and equipment. Construction projects at Arlington National Cemetery are estimated to cost \$1,763,000 in 1984. The balance of \$317,000 will be spent on administration.

ENVIRONMENTAL PROTECTION AGENCY

1983 appropriation	\$3,719,688,200
Estimate, 1984	3,702,591,000
Recommended in bill	3,861,864,000
Increase above estimate	+159,273,000

The Environmental Protection Agency was created by Reorganization Plan No. 3 of 1970, which consolidated some nine programs from five different agencies and departments. Throughout the 1970's the agency's responsibilities grew steadily with the passage and subsequent revision of authorizing legislation for the various media programs. EPA now bears Federal responsibility for environmental pollution abatement, control, compliance, enforcement and research and development in the areas of air, water quality, drinking water, hazardous waste, pesticides, radiation, toxic substances and the investigation, emergency removal and cleanup of hazardous waste sites. In addition, EPA administers Federal assistance for the construction grants program to build facilities to handle treatment of municipal wastewater.

A basic objective of each of the major environmental programs is for each State to assume increased responsibilities for program monitoring, enforcement and administration commensurate with its capacity for effective program management. EPA is responsible for conducting basic and applied research and development, establishing environmental standards, monitoring pollution conditions, and providing both technical assistance and grant support to State and local agencies for planning, monitoring and enforcement activities.

EPA's operating program budget is comprised of the salaries and expenses, research and development, abatement, control and compliance, and buildings and facilities appropriation accounts. From its peak in fiscal year 1981, the operating budget has decreased by over 23 percent in 2 years—even when substantial Congressional add-ons above the budget requests for both 1982 and 1983 are taken into account. The 1984 budget request seeks an additional 9 percent reduction below the current level.

The committee remains convinced that at the reduced 1984 request EPA cannot fulfill its statutory responsibilities and the mandates of Congress. The past year has seen serious and widespread management problems threaten mission performance across the agency. While the evidence suggests that the root of these problems was not budget related, the fact remains that the Agency must have sufficient resources if it is to meet its substantial responsibilities.

The committee has evaluated the budget justifications and testimony from administration and other witnesses and has found the rationale for many of the proposed reductions sorely lacking. In particular, the committee rejects the notion that as State responsibilities increase with program delegations, the substantial reductions proposed in EPA State grants will strengthen the Federal/State partnership. Similarly, the committee believes that research and development activities cannot be further contracted and subjugated to regulatory program requirements in the face of environmental problems that are found to be more complex, more serious and more widespread each day. Finally, it is clear that for EPA to operate effectively and maintain its credibility, the Agency's critical mass of technical and professional expertise cannot be allowed to erode through further personnel reductions.

The specific items are described in amounts appropriate to not more than one committee.

1983 appropriation...
Estimate, 1984
Recommended in bill
Increase above estimate

The salaries of administering EPA Response Trust. This provides support of all Agency and all field administrative compliance, enforcement. The committee following changes:

+ \$1,000,000
Great Lakes the laborator
+ \$400,000
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1983 appropriation...
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Recommended in bill
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Reorganizational programs about the passage of various environmental and air, drink-water, and hazardous substances legislation for treatment

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The specific increases in operating programs and the Superfund are described in detail in the separate accounts below. Of the amounts approved in the following appropriation accounts, the Agency must limit transfers of funds between programs and activities to not more than \$500,000 without prior approval of the committee.

SALARIES AND EXPENSES

1983 appropriation.....	\$548,613,200
Estimate, 1984.....	540,389,000
Recommended in bill.....	567,889,000
Increase above estimate.....	+27,500,000

The salaries and expenses appropriation supports all costs of administering EPA's programs, exclusive of the Hazardous Substance Response Trust Fund and program-specific contractual agreements. This provides support for executive direction, management and support of all Agency programs at headquarters, the 10 regional offices and all field stations. This account includes all personnel and administrative costs associated with EPA's abatement, control and compliance, enforcement, and research and development activities.

The committee's recommendation of \$567,889,000 reflects the following changes from the budget estimate of \$540,389,000:

+ \$1,000,000 to maintain the current overall level for the Great Lakes research program and eight positions to fully staff the laboratory at Grosse Ile, Mich.

+ \$400,000 and 10 positions to continue the headquarters review of advanced wastewater treatment construction grants projects. The committee urges that EPA field and regional AWT reviews be based on the same set of criteria as headquarters to avoid potential wasted effort in planning and design of projects that may not be approvable.

+ \$1,000,000 and 20 positions for toxic chemical reviews and toxic integration.

+ \$1,400,000 and 35 positions for the Inspector General's office to strengthen audits and investigations and eliminate waste, fraud and abuse.

+ \$3,000,000 and 40 positions for pesticide programs, including expanded pesticide monitoring, laboratory audits and enhanced data management capabilities.

+ \$22,200,000 and 587 positions to be allocated to programs on a priority basis at the Administrator's discretion. No additional resources or positions may be allocated for management and support activities.

- \$1,500,000 as a general reduction to be taken from management and support activities at the Agency's discretion.

Finally, the committee urges EPA to meet the statutory directive of section 6002 of the Resource Recovery and Conservation Act and issue procurement guidelines on recovered materials.

RESEARCH AND DEVELOPMENT

1983 appropriation.....	\$119,000,000
Estimate, 1984.....	111,669,000
Recommended in bill.....	142,000,000
Increase above estimate.....	+30,331,000

POOR COPY

The committee is recommending \$142,000,000 for EPA research and development activities in fiscal year 1984. This level is \$80,881,000 above the budget request and is to be distributed as follows:

- + \$3,000,000 for health effects research in air, drinking water and toxics.
- + \$1,000,000 for health effects research in non-ionizing radiation.
- + \$5,000,000 for air and water pollution control technology.
- + \$3,000,000 for hazardous waste control technology. The committee is concerned that EPA's regulatory and research activities have done little to decrease our heavy reliance on land-filling as the predominant method of hazardous waste disposal. The committee urges EPA to adopt the goal of greatly expanded use of waste treatment, incineration and other preferred disposal methods and to structure its regulatory and research programs accordingly to reduce the cost and technical constraints.
- + \$1,000,000 for drinking water research. The committee recognizes the increased research commitment of the municipal water industry to improving service and directs EPA to encourage this progress with matching research support of industry priorities, including the problems faced by small systems.
- + \$1,500,000 for Great Lakes research to continue the current level of effort in research of large lakes and tributaries.
- + \$1,500,000 for the National Crop Loss Assessment Network.
- + \$2,000,000 for indoor air pollution.
- + \$1,000,000 to initiate research into the human toxicity of dioxin and other chlorophenols to help establish safe and realistic standards for cleanup. EPA should coordinate this work with the epidemiological studies being conducted by the Centers for Disease Control to avoid any duplication of effort.
- + \$2,000,000 for the exploratory research core program. The benefits of exploratory grants can only be realized by effectively focusing research in relevant and critical areas. Therefore, the committee strongly supports EPA's efforts to manage the program based on long-range strategic planning and directs EPA to submit a report by October 1, 1983 evaluating the program's performance and indicating emphasis areas in emerging problems.
- + \$500,000 for continuing studies of aquifers currently used for drinking water, including determining the sources of man-made and natural contamination, the geologic structures and movement of pollutants, aquifer recharge potential and corrective measures.
- + \$8,831,000 for research and development activities to be allocated at the Agency's discretion, subject to the committee's direction that EPA accelerate development of Limestone Injection Multistage Burner (LIMB) technology and undertake a full-scale demonstration, and complete the analysis and publication of all data collected in the acid rain research assessment of the Great Lakes.

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ABATEMENT, CONTROL AND COMPLIANCE

1983 appropriation.....	\$369,075,000
Estimate, 1984.....	293,933,000
Recommended in bill.....	370,375,000
Increase above estimate.....	+76,442,000

The committee recommendation of \$370,375,000 reflects the following increases to the budget estimate:

+ \$14,780,000 for air programs section 105 State grants.
 + \$30,200,000 for water quality program section 106 State grants.

+ \$6,246,000 for public water system drinking water grants.
 + \$1,906,000 for underground injection control grants.
 + \$7,500,000 for hazardous waste management State grants.
 + \$1,785,000 for pesticide enforcement State grants.

The additions to the above six media total \$62,417,000 and maintain funding at 1983 levels—except for hazardous waste grants, which are increased by \$5,932,000 and underground injection control grants, which are increased by \$926,000 above the 1983 level.

+ \$1,000,000 to continue the Great Lakes program at essentially the current level.

+ \$1,900,000 for the National Rural Water Association to maintain the current level of funding.

+ \$1,000,000 for hazardous waste guidelines, policies, and enforcement.

+ \$2,000,000 for nonpoint source water pollution control strategies. In many areas nonpoint sources contribute well over half of total pollution. The committee is concerned that preoccupation with point source controls will prove to be overly costly and inefficient in improving overall water quality. EPA should analyze the extensive body of past research in nonpoint source problems to identify and rank the highest payoff problem areas and submit a report by January 1, 1984, outlining specific strategies and approaches recommended for addressing nonpoint sources in a cost-effective manner.

+ \$2,625,000 for wastewater treatment operator training to continue this program at the current level and protect the Federal capital investment in plant and equipment. Despite continued congressional funding, the administration's repeated proposals to terminate operator training have discouraged systematic planning and State initiatives. EPA is directed to examine State training capabilities and needs, evaluate alternative Federal, State and local roles and approaches, and submit by February 15, 1984, a multiyear national plan to assure an orderly and fully effective transition to State responsibility.

+ \$1,500,000 for academic training with increased emphasis to be placed on fellowships for State environmental personnel.

+ \$4,000,000 to initiate a study of dioxin and other chlorophenols including comprehensive monitoring of severe problem areas—primarily in Michigan and Missouri—and a national screening study to determine concentrations in other areas. The committee is deeply concerned over the health risks presented by widespread dioxin contamination and requests that

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EPA submit its design study plan for review within 60 days after enactment of this bill. The report should include the study structure and schedule, sampling techniques and sites, source identification methods, and plans for contract and in-house laboratory analysis. The committee further directs EPA to examine the potential role in this study of the laboratory at Grosse Ile, Mich., because of its established expertise and continuing responsibilities in Great Lakes research.

BUILDINGS AND FACILITIES

1983 appropriation	\$3,000,000
Estimate, 1984	2,600,000
Recommended in bill	2,600,000

This activity provides for the design and construction of EPA-owned facilities as well as for the repair and improvement of facilities utilized by the Agency. The funds are used primarily to correct unsafe conditions, to protect health and safety of employees and to prevent serious deterioration of structures or equipment.

The bill includes the full \$2,600,000 requested in the budget estimate. Repair and improvement projects exceeding \$250,000 in estimated cost should not be undertaken without the specific approval of the House and Senate Committees on Appropriations.

PAYMENT TO THE HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

1983 appropriation	\$40,000,000
Estimate, 1984	44,000,000
Recommended in bill	44,000,000

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, established the Hazardous Substance Response Trust Fund. The trust fund is financed by industry fees, appropriations, recovered moneys and interest on investments.

The budget estimate of \$44,000,000 has been included in the bill. This amount represents the Federal payment into the trust fund.

HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

1983 appropriation	\$210,000,000
Estimate, 1984	318,000,000
Recommended in bill	338,000,000
Increase above estimate	+25,000,000

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 established a trust fund commonly referred to as "Superfund." Under current law an estimated \$1,700,000,000 will be available from Superfund to finance emergency responses to hazardous substance spills and cleanup of dangerous, uncontrolled and abandoned hazardous waste sites. The Act mandates extensive enforcement activities to identify and induce parties responsible for hazardous waste problems to undertake removal or remedial action. The Act also envisions that liable parties will be pursued to recover costs incurred by Federal and State agencies for cleanup actions at spills and waste sites.

A national priority list of the 419 sites of highest priority for cleanup under Superfund has been issued. EPA estimates that ap-

proximately one-half the cost of response or reimbursement about 170 sites. The bill provides a framework for joint responses. The bill also provides for a State cap on response actions.

The 1984 budget request is above the 1983 level for 707 total work to hazardous substance removals, 55 removals and the initiation of development, \$17 million and \$22,106,000 for response actions and conduct.

The bill provides for an increase of \$335,000,000 in appropriations and \$400,000 in increased Superfund appropriations and \$24,600,000 change of conditions prior to initiation of field investigation. The bill also provides for an increase in the dimensions of the trust fund should greatly exceed the current year. The committee estimates that this appropriation is coming years.

The bill also provides for an increase in appropriations for Superfund of \$38,839,000 for Superfund, \$3,236,000 for Superfund, and \$4,234,000 for Superfund.

The committee also addresses legal issues and legal Superfund program. The committee also recognizes the need for Superfund to address the issue of site cleanup and settlement.

However, the committee also recognizes the need for Superfund to address the issue of site cleanup and settlement. The committee also recognizes the need for Superfund to address the issue of site cleanup and settlement.

The committee also recognizes the need for Superfund to address the issue of site cleanup and settlement.

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priority for es that ap-

proximately one-half of these sites will be cleaned up at private expense or reimbursement and that the current Superfund will finance about 170 site cleanups. The Superfund legislation provides a framework for joint Federal and State emergency environmental responses. The committee strongly supports the objective of maximizing State capabilities and giving States principal responsibility for response actions whenever possible.

The 1984 budget request is \$310,000,000, a substantial increase above the 1983 level of \$210,000,000. The request provides funding for 707 total workyears, about one-half of which would be devoted to hazardous substance response actions--including 50 emergency removals, 55 remedial investigation feasibility studies, 40 designs, and the initiation of remedial cleanup actions at 22 additional sites. A total of \$6,881,000 is targeted for Superfund research and development, \$15,855,000 for management and support activities, and \$22,106,000 for enforcement work to identify responsible parties and conduct negotiations and/or litigation to recover costs.

The bill provides \$25,000,000 above the budget request, for a total of \$335,000,000, to expand Superfund program activities. Ten positions and \$400,000 are added to the Inspector General's office for increased Superfund audits and investigations. In addition, 90 positions and \$24,600,000 are provided to support EPA's recent policy change of conducting remedial investigation feasibility studies prior to initiation of settlement negotiations or litigation. By completing field investigations beforehand, EPA will be able to establish the dimensions of both the problem and the solution. This should greatly enhance the prospects of fair and speedy settlement. The committee strongly supports this policy change and believes that this approach should reduce Superfund expenditures in the coming years.

The bill also includes a provision limiting administrative expenses for traditional salary and expense items to \$51,984,000. This includes \$38,839,000 for personnel compensation and benefits, \$3,286,000 for travel, \$5,625,000 for communications, utilities and rent, and \$4,234,000 for equipment and other expenses.

The committee appreciates that the technical problems, policy issues and legal questions being addressed for the first time by the Superfund program are exceedingly complex. The committee further recognizes that the unique circumstances and special conditions of each site's waste inventory, topography and population exposure defy standardized solutions and preset schedules.

However, the extensive problems and criticisms of EPA's administration of the Superfund--regardless of whether they are found justified or not--point out a serious management problem. The absence of an integrated and consistently applied set of guidelines, procedures and criteria for decisionmaking makes every EPA cleanup and settlement decision appear to be ad hoc and subject to challenge as being arbitrary or showing favoritism. EPA must establish the necessary management controls to demonstrate that Superfund decisions are made fairly and consistently to ensure public confidence in the program and Congressional satisfaction that appropriated funds are being well spent.

The committee therefore directs EPA to undertake a comprehensive review and evaluation of the various technical and enforce-

ment guidelines and the effectiveness of their implementation. The agency should submit a report by October 1, 1983, to identify: (1) program priorities and the interdependency of decisions, including handoffs between enforcement and cleanup activities; (2) critical guidelines and specific criteria for decisionmaking; and (3) problems and conflicts in efficient program execution and integration. The following specific issues and program areas should be addressed:

- Delegations of authority and State roles and responsibilities;
- Initiation of litigation and amount of damages;
- Settlement agreement terms;
- Selection of sites for emergency removals, feasibility studies, design work and cleanups;
- Risk assessment and cleanup standards; and
- Monitoring requirements.

CONSTRUCTION GRANTS

1983 appropriation.....	\$2,430,000,000
Estimate, 1984.....	2,400,000,000
Recommended in bill.....	2,400,000,000

Construction grants are made to municipal, intermunicipal, State and interstate agencies to assist in financing the planning, design and construction of wastewater treatment facilities. Since 1972, nearly \$40,000,000 has been appropriated for this purpose.

This bill includes the \$2,400,000,000 requested in the budget estimate. No separate appropriation is provided for combined sewer overflow projects. This category can be funded at Governors' discretion if projects are of sufficient State priority.

EXECUTIVE OFFICE OF THE PRESIDENT

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

1983 appropriation.....	\$926,000
Estimate, 1984.....	913,000
Recommended in bill.....	700,000
Decrease below estimate.....	-213,000

The National Environmental Policy Act of 1969 created the Council on Environmental Quality to provide assistance and advice to the President in matters relating to the quality of the national environment. The Environmental Quality Improvement Act of 1970 established an office to provide professional and administrative staff for the Council. The Council on Environmental Quality has statutory responsibility for environmental oversight, which includes analyzing and interpreting environmental information, conducting investigations, making policy recommendations and reporting on changes in the environment.

The committee notes that the composition and role of the Council have been changed radically in the past two years. Budget reductions have decreased staff from 49 in the 1981 budget estimate to 18 in the 1984 request. The Council's changing role is further evidenced by the fact that not a single scientist or technical expert

is on the permanent offer substantive con-

The accomplishments modest at best. The environmental messages substantive changes function seems to be the environment appear weak, as evidenced by travel costs in 2 private groups for corridor delays in transmission.

The committee has performed of its station to the Nation's needs of funds approximately \$700,000 for CEQ in estimate. The committee EPA research and benefits to the environment amount expended of level of \$13,000.

OFFICE

1983 appropriation.....	
Estimate, 1984.....	
Recommended in bill.....	
Decrease below estimate.....	

The Office of Science and National Science Act of 1976. It policy analysis for plans and programs assists in evaluating and technology.

The bill includes the Office of Policy in fiscal appropriation and \$1: believes the estimate: stated by \$49,000 a \$20,000. In addition: ditional senior executive the fiscal year

FEDERAL

1983 appropriation.....	
Estimate, 1984.....	
Recommended in bill.....	
Decrease below estimate.....	

The Federal Agency proposed by the President Agency operates wide range of pro-

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DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT—INDEPENDENT AGENCIES
APPROPRIATIONS FOR 1982

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES
NINETY-SEVENTH CONGRESS
FIRST SESSION

SUBCOMMITTEE ON HUD—INDEPENDENT AGENCIES

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BOB TRANLER, Michigan
LOUIS STOKES, Ohio
LINDY (MRS. HALE) BOGGS, Louisiana
MARTIN OLAV SABO, Minnesota
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RICHARD N. MALOW, PAUL E. THOMSON, and DELACROIX DAVIS III, *Staff Assistants*

PART 5
ENVIRONMENTAL PROTECTION AGENCY

Printed for the use of the Committee on Appropriations



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WASHINGTON : 1981

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drinking water programs. These grants will not be reduced from 1981 levels, and the hazardous waste grants to States will be increased. The States are an essential element in the implementation of effective environmental programs, and this grant package will assure their continued strength.

Although it has been a difficult task to identify the areas where we should reduce funding consistent with the overriding economic needs of our country, we strongly support the President's efforts to bring Federal spending under control.

Despite the reductions, I am confident that we will be able to move ahead with the most important of our environmental programs. We will continue to see progress and address the major threats to our natural environment. We will not be able to satisfy everyone, but this budget does give us the tools needed to carry out our major missions.

Mr. Chairman, this concludes my summary statement. I would like to submit a brief statement for the record on the changes in our operating programs. My colleagues and I will now be happy to answer questions that you and other committee members may have.

Thank you very much.
(The prepared statement follows.)

ADMINISTRATOR'S PREPARED STATEMENT

I would now like to review with you the major changes in our operating programs.

AIR

In 1982, EPA's Air program will continue to focus its attention on those areas of the country requiring extensions until 1987 to attain air quality standards. New initiatives will be undertaken in controlling toxic emissions and ensuring that sources remain in compliance on a continuing basis. We will be reducing our mobile source effort to reflect our completion of most of the mandatory mobile source emission standards and a reduction in technical support to states in our inspection/maintenance program.

On the whole, our 1982 Air program will decrease slightly by 22 workyears and \$7.4 million for a program level of 1,766 workyears and \$239.1 million.

WATER QUALITY

In 1982, our Water Quality programs will emphasize the implementation stage of programs authorized and established by the Clean Water Act. The regulations and planning establishing the foundation for control programs will be largely in place by 1982. Accordingly, our 1982 water quality request reduces resources by 363 workyears and \$90.3 million to a program level of 2,426 workyears and \$247.3 million.

The biggest change in the Water Quality program is the termination of the section 205 State and areawide planning program. This is a reduction of \$34 million in grant support and 57.8 million and 127 workyears in resources that manage this program. Similarly, in construction grants, progressive State delegation of the program and lower obligation projections are reflected in the reduction of 98 workyears and \$5.3 million for management of this program. The clean lakes program has matured to the point that States are now able to integrate the restoration of lakes into their total water quality management process. Therefore, we have terminated this \$11 million grant program. The industrial effluent guidelines effort is reduced by \$12.1 million and 23 workyears reflecting the completion of most of the major regulatory development work. Additionally, our water quality research program will decrease by \$14.5 million and 65 workyears primarily due to the completion of much of the effluent guideline efforts and the termination of our Chesapeake Bay and Great Lakes research programs.

Two areas in our Water Quality program will increase in 1982—enforcement and ocean disposal. An increase of 5600 thousand and seventeen workyears will support a continuous compliance program for municipalities. An additional \$2.6 million will

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support the study and survey of ocean dumpsites that are being considered for designation.

DRINKING WATER

Our request for the 1982 Drinking Water program would increase that program by \$4.4 million for a total program of \$67.7 million and 514 workyears. Our emphasis will be on nationwide implementation of the underground injection control program and increased research related to the transport and fate of pollutants affecting sources of drinking water.

HAZARDOUS WASTE

The 1982 hazardous waste program will have resources totalling 658 workyears and \$119.8 million. This program will go through some major changes this next fiscal year. The uncontrolled waste site activities will now be absorbed, expanded, and supported by superfund. The Agency will accelerate the shift towards State control of programs for non-hazardous waste disposal and resource recovery by reducing Federal financial assistance by \$12 million and program management by 50 workyears and \$8.5 million for these two programs. The enforcement program will expand by 39 workyears and \$2.9 million to ensure that all applicable facilities comply with the standards established under the Resource Conservation and Recovery Act (RCRA). The research program will increase by 40 workyears and \$1.7 million to support RCRA regulation development for landfills, land treatment, and thermal destruction.

Finally, States will receive an additional \$11.7 million in financial assistance to develop and implement hazardous waste management programs.

PESTICIDES

EPA's Pesticides program will decrease by \$7.6 million and 67 workyears for a 1982 program level of \$62.1 million and 518 workyears. The majority of this reduction will be taken in registration standards where decreases of 34 workyears and \$4.8 million reflect the decision to reassess the efficiency of this program and the outcome of court rulings concerning the constitutionality of the basic data use and disclosure provision in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The registration program will be reduced in anticipation of productivity improvements.

Other reductions include an eleven workyear and \$3.6 million reduction in pesticides research for integrated pest management and a \$500 thousand reduction to pesticides certification and training grants.

There are two increasing programs in pesticides. Pesticides enforcement grants will increase by \$782 thousand and the RPAR program will increase by \$1.9 million for exposure and benefit analysis as well as other analysis associated with risk/benefit assessments of suspect chemicals.

RADIATION

Our 1982 request for the Radiation program includes \$12.9 million and 160 workyears reflecting a decrease of \$4.3 million and 26 workyears. Decreases in this program reflect deferral of Clean Air Act regulations development. Efforts to date have centered on characterizing the hazards of airborne radionuclides and on establishing regulatory priorities. Other reductions include the assumption of the radiation policy council responsibilities by its member organizations. The current capability of the agency to respond to radiological emergencies, such as Three Mile Island, will be maintained.

NOISE

In 1982 we are revising our policy with respect to the Federal effort to reduce noise exposure. We plan to phase-out the EPA Noise Control program by the end of 1982. This decision results from our determination that the benefits of noise control are highly localized and that the function of noise control can be adequately carried out at the state and local level without the presence of a Federal program. Therefore resources for noise in 1982 will decrease by 60 workyears and \$10.3 million.

INTERDISCIPLINARY

The President's 1982 budget requests 134 workyears and \$15.3 million for the Interdisciplinary program which will provide for an increase of 14 workyears and \$4.7 million. Energy facility review and permitting receives an increase of 24 work-

years and \$4.5 million primarily to enter its permits for energy projects and preparation of environmental impact environmental impact statement prep levels. Although research workyears methods for predicting and measuring tissue.

TOXIC

In 1982 our Toxic Substances program This reflects an increase of ten workyears 1981 levels. An increase of 18 workyear assessment of new chemicals, with the majority of that increase. The Agency will and implementation of the toxics into

An increase in the number of rules Control Act (TSCA) that require enforcement workyears for toxics enforcement. An support the establishment of a quality effects studies in neurotoxicology and ge

A reduction of \$4.6 million will eliminate grants and reduce record-keeping and development.

ES

In 1982, the President's Budget decreases a program level of 145 workyears and \$ the environmental effects of new energy pollution controls. Acid rain research the efforts to understand causes of acid groundwater and forest ecosystems. Research in support of Clean Water Act the decrease eliminates small energy-water, and solid waste in lieu of on-going problems.

MANAGEMENT

Our 1982 Management and Support program increases by 60 workyears. In the office of and \$1.2 million will be targeted to expand and criminal investigation capabilities to develop a multi-media enforcement strategy. We will be increasing our planning and \$7.4 million. Most of this is for continuing integrated toxic substances strategy to et and regulation of toxic substances in all statistical and program evaluation.

We will also be directing our efforts with states by centralizing our management. That process involves development of a presses the high priority concerns and of Support services will increase by \$8 million office and building services and space.

A total of 67 workyears will be eliminated by merging budget control, budget split between two divisions, and by remanagement. These personnel reductions contract dollars, training, counseling services. Mr. Chairman, this concludes my statement.

Mr. BOLAND. Thank you very much.
Mr. Green?

FUNDING RESPONSIBILITY TO CLEAN UP MILL TAILINGS SITES

Mr. GREEN. Who would pay for clean-up under the regulations?

Mr. TUERK. That cost would be borne by the Federal government.

Mr. GREEN. Is this regulation one the new Administration is likely to review critically and possibly, to alter?

Mr. TUERK. They have given us no indication that is a regulation they want to review.

Mr. GREEN. So you are not aware of any review by the new Administration?

Mr. TUERK. No.

NOISE PROGRAM

Mr. GREEN. Turn now to the Noise program, beginning on page N-1. The 1981 current estimate for the Noise program is \$18,045,000 in the amended 1982 budget—the comparable figure in the January submission was \$12,724,000. The Noise program is being phased out in 1982. The total 1982 request is \$2,271,000.

The authorization level line in the tabular summary indicates that there was no authorization in 1980 and there is not yet an authorization for 1981. When was the Noise program last specifically authorized?

Mr. TUERK. 1979.

REDUCTION IN FORCE FOR NOISE PROGRAM

Mr. GREEN. The reduction in 1982 totals \$10,774,000. Positions decline from 90 in 1981 to 29 in 1982. Will a reduction in force be necessary in either 1981 or in 1982 to meet revised personnel ceilings for the Noise program?

Mr. TUERK. A reduction in force may be required. The Agency is identifying the individuals who are at risk of being displaced and is actively trying to work them into existing vacancies in the Agency. To the extent that our placement program doesn't fully accommodate the reductions with which we are faced, a RIF would be required in 1981 and possibly in 1982.

Mr. GREEN. How many positions are currently occupied?

Mr. TUERK. Permanent, something around 60.

Mr. GREEN. How many workyears have been funded to date in the Noise program in fiscal year 1981?

Mr. TUERK. The workyears would be the total shown on page N-2, which would be 105.

Mr. GREEN. Do you envision that 1982 will be the last year for which funds are requested in the Noise program?

Mr. TUERK. That is the current understanding.

Mr. GREEN. Under those circumstances, why shouldn't we just close it down now?

Mr. TUERK. The main reason for carrying a program into 1982 is to allow us to have an orderly phase-out.

Let me give you some examples. The assumption is that State and local agencies will continue to be active in the noise field. We have at the present time some 1,000 communities, for example, that have noise programs. So what we very much want to do over the next 18 months is to take the considerable amount of technical knowledge we have gathered both in regulation-writing and in

doing research and developing knowledge and packaging it in a way available to State and local agencies.

In addition, there is some concern about regulations we have promulgated. There needs to be a way of actions to either rescind or modify.

We have health studies under way in 1982 and we need to be in a position from those studies and again make decisions about the community as well as the State and local.

So it is all in the context of providing the maximum protection possible to the continuation of the program at the level.

Mr. GREEN. Do you imagine you will have to change the books when the program is closed?

Mr. TUERK. They don't come out until something is done to rescind.

Mr. GREEN. Do you anticipate you will have to change the books?

Mr. TUERK. That is a matter that we do not at this time have a firm decision on.

Mr. GREEN. Was the decision made by OMB?

Mr. TUERK. OMB specifically.

INTERDISCIPLINARY

Mr. GREEN. Turn to Interdisciplinary Research. The request is \$15,304,000 and 134 positions of approximately \$700,000 each. The 1981 budget estimate column indicates a total of \$10,697,000. The positions submitted in January 1982 are \$27,241,000. I realize that the request is increased, but this change strikes me as surprising. The Committee has been in the past years, especially of the restructuring anything more than a research program?

Dr. Dowd. Mr. Chairman, in the program in part to reflect the kind of program that really needed to be done in our individual research program. The Committee has been in the past years, especially of the restructuring anything more than a research program.

Mr. GREEN. Please indicate the budget estimate of \$27,241,000 as portrayed on page I-1.

Dr. Dowd. I would note in the each of the program elements in the program it is difficult to pick those out. I would like to see them to the Committee.

Mr. GREEN. That will be helpful.

doing research and developing control techniques; taking that knowledge and packaging it in such a form that it can be made available to State and local agencies.

In addition, there is some concern about the existing Federal regulations we have promulgated over the past half-dozen years for noise. There needs to be a way over the next 18 months of handling actions to either rescind or modify those.

We have health studies underway which will continue well into 1982 and we need to be in a position to be able to take the results from those studies and again make them available to the scientific community as well as the State and local agencies.

So it is all in the context of providing the most effective transition possible to the continuation of activities at the State and local level.

Mr. GREEN. Do you imagine you'll have a body of regulations on the books when the program is closed down?

Mr. TUERK. They don't come off automatically. They stay there until something is done to rescind or modify them.

Mr. GREEN. Do you anticipate you will be rescinding them?

Mr. TUERK. That is a matter that is under consideration and we do not at this time have a firm decision.

Mr. GREEN. Was the decision to terminate the program made by OMB?

Mr. TUERK. OMB specifically requested that it be terminated.

INTERDISCIPLINARY PROGRAM

Mr. GREEN. Turn to Interdisciplinary program. The revised 1982 request is \$15,304,000 and 134 positions, which represents a decrease of approximately \$700,000 from the January submission. The 1981 budget estimate column for the Interdisciplinary program indicates a total of \$10,697,000. However, in the 1981 budget justifications submitted in January of 1980, the 1981 total was \$27,241,000. I realize that the research programs have been restructured, but this change strikes me as more than the basic restructuring. The Committee has been extremely critical of this program in past years, especially of the Anticipatory Research element. Is this restructuring anything more than a ruse to bury the Anticipatory Research program?

Dr. Dowd. Mr. Chairman, in fact, we had reorganized the program in part to reflect the kinds of activities in this research program that really needed to be carried out, and tried to hold them in our individual research committees so the research committee could make sure the research met the needs of the Agency, partly in response to the Agency's concern that this research needed someone to watch it more carefully. That is the reason for distributing these pieces of research to other elements.

Mr. GREEN. Please indicate precisely where the original 1981 budget estimate of \$27,241,000 is reflected in the 1981 column portrayed on page I-1.

Dr. Dowd. I would note in the tabs I think we have indicated each of the program elements in the budget submission. Of course, it is difficult to pick those out. I will assemble those and submit them to the Committee.

Mr. GREEN. That will be helpful.

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NOISE

	Actual 1982	Suppl Estimate 1981	Current Estimate 1981	Estimate 1982	Increase - Decrease - 1982 vs 1981	Page
<i>(dollars in thousands)</i>						
Appropriation						
Salaries and Expenses.....	\$4,749	\$4,575	\$4,585	\$1,906	-12,979	
Abatement, Control and Compliance.....	2,662	8,352	8,160	365	-7,798	
Total.....	12,411	12,927	13,045	2,271	-10,774	
Permanent Workyears.....	97	99	90	29	-61	
Full-time Equivalency.....	152	153	134	43	-91	
Outlays.....	11,829	11,000	12,505	12,050	-445	
Authorization Levels.....						
*Authorization pending.						
PROGRAM HIGHLIGHTS						
Environmental Noise						
Strategies and Standards: Salaries and Expenses...	1,945	1,900	1,982	1,906	-76	N-7
Abatement, Control and Compliance.....	3,902	4,353	4,236	365	-1,371	
Noise Program Strategies Implementation:						
Salaries and Expenses...	1,926	1,959	2,010	...	-2,010	N-13
Abatement, Control and Compliance.....	3,514	3,774	3,711	...	-3,711	
Total:						
Salaries and Expenses...	3,871	3,859	3,992	1,906	-2,086	
Abatement, Control and Compliance.....	7,416	8,127	7,947	365	-7,582	
Total, Abatement and Control Program.....	11,287	11,986	11,939	2,271	-9,660	
Noise Enforcement:						
Salaries and Expenses...	876	714	893	...	-893	N-20
Abatement, Control and Compliance.....	246	225	213	...	-213	
Total, Enforcement Program.....	1,124	941	1,106	...	-1,106	

N-1

	Actual 1980	Est. 1981
Permanent Positions		
Environmental Noise Strategies and Standards..	37	
Noise Program Strategies Implementation.....	38	
Total, Abatement and Control Program.....	75	
Noise Enforcement, Total Enforcement Program.....		
	22	
Full-time Equivalency		
Environmental Noise Strategies and Standards...	56	
Noise Program Strategies Implementation.....	64	
Total, Abatement and Control Program.....	120	
Noise Enforcement, Total Enforcement Program.....		
	32	

OVERVIEW AND STRATEGY

The 1982 noise control budget represses Federal effort to reduce noise exposure. The program will be phased out by the end of 1982 when the benefits of noise control are noise control can be adequately carried out in the absence of a Federal program.

States and localities have shown a strong interest in developing their own noise control programs. 27 States have enacted noise control laws and 180 local communities have ongoing noise control programs. This growth (77% in the last four years) reveals a strong interest in addressing noise control problems within their communities.

The major components of EPA's existing noise control program are Federal noise regulations, assistance to State and local noise program research, and noise control research.

In both 1981 and 1982, activities are being phased out of current program activities. This orderly phase-out of present activities is an effective assumption of noise control responsibility to the State and local program benefits of noise control.

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	Actual 1980	Budget Estimate 1981	Current Estimate 1981	Estimate 1982	Increase = Decrease =	Page
1981	Page	(dollars in thousands)				
<u>Permanent Positions</u>						
<u>Environmental Noise</u>						
Strategies and Standards...	37	37	25	29	-4	N-7
Noise Program Strategies Implementation.....	38	43	44	...	-44	N-13
Total, Abatement and Control Program.....	75	80	69	29	-40	
Noise Enforcement, Total Enforcement Program.....	23	19	21	...	-21	N-20
<u>Full-time Equivalency</u>						
<u>Environmental Noise</u>						
Strategies and Standards...	56	52	42	43	+1	N-7
Noise Program Strategies Implementation.....	64	68	63	...	-63	N-13
Total, Abatement and Control Program.....	120	120	105	43	-62	
Noise Enforcement, Total Enforcement Program.....	32	35	29	...	-29	N-20

OVERVIEW AND STRATEGY

The 1982 noise control budget represents a major policy change with respect to the Federal effort to reduce noise exposure. Under this budget request the EPA noise control program will be phased out by the end of the 1982. This decision results from a determination that the benefits of noise control are highly localized and that the function of noise control can be adequately carried out at the State and local level without the presence of a Federal program.

States and localities have shown a significant increase in their ability and desire to develop their own noise control programs. During the last decade, over 1000 municipalities and 27 States have enacted noise control legislation. Of these, 13 States and over 160 local communities have ongoing noise control programs with active enforcement. This growth (77% in the last four years) reveals a demonstrated ability for local communities to address noise control problems within their jurisdiction.

The major components of EPA's existing noise control effort are promulgation and enforcement of Federal noise regulations, the provision of financial and technical assistance to State and local noise programs, and the conduct of noise health effects research.

In both 1981 and 1982, activities are being structured to achieve a prompt but orderly phase out of current program activities. This will be done in such a way so as to transfer to the State and local program benefits of the knowledge and experience EPA has gained. This orderly phase-out of present activities is essential if we are to facilitate an effective assumption of noise control responsibilities by State and local noise programs.

Summary of Enforcement Control and Compliance Program

The Sciences and Expenses and Abatement, Control and Compliance appropriations include noise control strategies and programs designed to protect the public health and welfare during the 1981-1982 fiscal period. These program objectives are pursued through four major program activities: first, emission standards and/or labeling regulations are promulgated on selected products; second, State and local noise control efforts are strengthened through the provision of technical assistance and limited financial assistance through cooperative agreements; third, Federal activities relating to noise research and abatement and control are coordinated; and fourth, investigations on noise effects and abatement and control technology are conducted.

Noise control product regulation includes the identification of major sources of noise and the subsequent development of emission regulations for newly manufactured products. These standards are intended to protect the public health and welfare through the application of the best available noise control technology, taking into account the cost of compliance. Regulations requiring the labeling of newly manufactured consumer products are authorized for products which emit noise capable of adversely affecting the public health and welfare. Labeling is also authorized for products which are sold on the basis of their effectiveness in reducing noise.

Technical assistance as well as limited financial assistance is provided to State and local governments for the development and implementation of noise control programs, with special emphasis on in-use enforcement programs for noise sources.

Technical assistance is provided in the form of direct guidance to State and local agencies on how to carry out environmental assessment in order to define noise problems and to other Federal Agencies whose programs and activities have noise control implications.

SUMMARY OF INCREASES AND DECREASES

(in thousands of dollars)

1981 Noise Program.....	13,045
Salaries and Expenses.....	-2,978
This decrease reflects the orderly phase-out of the noise control regulatory activities in 1982. Due to the localized nature of noise problem and the maturing local programs to deal with this problem, the program is phasing down in 1982.	
Abatement, Control and Compliance.....	-7,795
This reduction reflects the elimination of the program with the completion of all remaining health effects research studies and technological demonstrations in 1982.	
1982 Noise Program.....	<u>2,273</u>

SUMMARY OF BUDGET ESTIMATES

1. Summary of Budget Request

An appropriation of \$3,371,400 to the appropriation account, is as follows:

Salaries and Expenses.....
 Abatement, Control and Compliance.....

This request reflects a \$10,773,600 decrease regulatory activities and the completion of and the technological demonstrations in 1982.

2. Changes from Original 1981 Budget Estimate

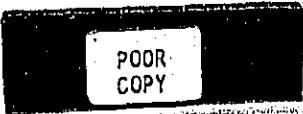
Changes from the budget are as follows:

Original 1981 Estimate.....
 Congressional decreases:
 General reduction to Abatement, Control and Compliance.....
 Consultant services.....
 Senior Executive bonuses.....
 Travel.....
 Presidential reduction of \$27M (in Reprogramming for salary and reprogramming for miscellaneous reprogramming.....
 Proposed pay raise supplemental. March changes to budget:
 Travel.....
 Funding for PCAB deficits.....
 Miscellaneous Reprogramming.....

Current 1981 estimate.....

This represents an increase of \$137,900 from the original budget of many changes:

The \$9 million Presidential reduction for decrease to the noise media. A \$250,000 general reduction. The \$3.8 million reduction for cost \$73,300. The Congress applied a general reduction and Compliance appropriation, a decrease of \$1,5750,000, a decrease of \$62,200 applied to the



SUMMARY OF BUDGET ESTIMATES1. Summary of Budget Request

An appropriation of \$3,271,400 is requested for 1982. This request, by appropriation account, is as follows:

Salaries and Expenses.....	1,906,000
Abatement, Control and Compliance.....	365,400

This request reflects a \$10,773,600 decrease. An orderly phase-out of the noise control regulatory activities and the completion of all remaining health effects research studies and the technological demonstrations is to be completed by the end of 1982.

2. Changes from Original 1981 Budget Estimate

Changes from the budget are as follows:

	(in thousands of dollars)
Original 1981 Estimate.....	12,327
Congressional decreases:	
General reduction to Abatement, Control and Compliance.....	-159
Consultant services.....	-73
Senior Executive bonuses.....	-62
Travel.....	-8
Presidential reduction of \$7M (H.Doc 95-294)...	-27
Reprogramming for salary and related costs...	-43
Miscellaneous reprogramming.....	-59
Proposed pay raise supplemental.....	+70
March changes to budget:	
Travel.....	-24
Funding for PCB deficits.....	+503
Miscellaneous Reprogramming.....	+29
Current 1981 estimate.....	13,045

This represents an increase of \$117,900 from the 1981 level. The net increase is comprised of many changes:

The \$7 million Presidential reduction for Salaries and Expenses resulted in a \$27,300 decrease to the noise media. A \$850,000 agencywide travel decrease resulted in a \$7,600 reduction. The \$3.8 million reduction for consultant services decrease this media by \$73,300. The Congress applied a general reduction of \$7.5 million to the Abatement, Control and Compliance appropriation, a decrease of \$158,900; reduced Senior Executive bonuses by \$750,000, a decrease of \$62,200 applied to this media.

The total reprogramming is included to fund cost of the 1981-1982 pay raise, including the 1981-1982 pay raise. Reprogrammings include salary and related costs, including the 1981-1982 pay raise. Reprogrammings include salary and related costs, including the 1981-1982 pay raise. Reprogrammings include salary and related costs, including the 1981-1982 pay raise.

Reprogramming with the 1981 changes reduced travel in the 1981-1982 pay raise. Internal policy reprogrammings were as follows: equipment costs (-\$12,000), contract services (-\$10,800), agencywide increases (-\$147,500 and miscellaneous reprogrammings (-\$25,300).

ANALYSIS OF INCREASE AND DECREASE TO OBLIGATIONS

	Current Estimate 1981	Estimate 1982
	(in thousands of dollars)	
Prior year obligations.....	\$12,411	\$13,045
Effect of Congressional changes.....	-291	...
Effect of pay raise supplemental.....	+70	...
Changes in amount of carryover funds available.....	-69	...
Program change.....	-634	-10,774
Effect of reprogrammings.....	+430	...
Change in rate of obligations.....	+140	...
Total estimated obligations.....	13,045	2,271
(From new obligation authority).....	(13,045)	(2,271)
(From prior year funds).....	(...)	(...)

EXPLANATION OF INCREASE AND DECREASE TO OBLIGATIONS

The changes discussed in the previous section -- congressional, pay raise supplemental, and reprogrammings -- are expected to result in a new increase of \$117,900.

There are no carryover funds to be obligated as the results of a \$69,000 decrease from the 1981 level.

A change in the rate of obligation is expected, thereby decreasing obligations by \$140,000.

Actual 1981 Budget Estimate 1981

Program Levels

Review production verification reports	700	1,244
Monitor production verification tests	6	12
Conduct Selective Enforcement Audit Tests	11	37
Inspect Manufacturers' records/facilities	10	39
Develop State/local enforcement guidance packages	2	3
Inspect Manufacturers' test capability	5	19
Review labeling verification reports	15	210
Monitor labeling verification tests	3	10
Monitor labeling compliance audits	0	6



	YOISE				
	Actual 1988	Budget Estimate 1991	Current Estimate 1991	Estimate 1992	Increase + Decrease - 1992 vs. 1991
<u>Program Levels</u>					
Review production verification reports	700	1,244	622	...	-622
Monitor production verification tests	6	12	5	...	-5
Conduct Selective Enforcement Audit Tests	11	37	7	...	-7
Inspect Manufacturers' records/facilities	10	39	15	...	-15
Develop State/local enforcement guidance packages	2	3	1	...	-1
Inspect Manufacturers' test capability	8	19	6	...	-6
Review labeling verification reports	15	210	100	...	-100
Monitor labeling veri- fication tests	3	10	5	...	-5
Monitor labeling compliance audits	0	6	3	...	-3

NOISE

Environmental Noise Strategies and Standards

	Actual 1982	Budget Estimate 1981 (dollars in thousands)	Current Estimate 1981	Estimate 1982	Increase - Decrease - 1982 vs 1981
Accomplishment					
Noise Standards Development:					
Salaries and Expenses.....	\$1,114	\$1,233	\$1,032	595	-577
Abatement and Control and Compliance.....	1,822	2,382	2,201	...	-2,201
Noise Control Technology Assessment and Criteria Development:					
Salaries and Expenses.....	831	667	950	951	+1
Abatement, Control and Compliance.....	2,080	1,971	2,035	365	-1,670
Total:					
Salaries and Expenses.....	1,945	1,900	1,982	1,906	-76
Abatement, Control and Compliance.....	3,902	4,353	4,236	365	-3,971
Grand Total.....	5,847	6,253	6,218	2,271	-3,947
Permanent Positions					
Noise Standards Development:					
Noise Standards Development.....	19	22	14	14	...
Noise Control Technology Assessment and Criteria Development.....	18	15	11	15	+4
Total.....	37	37	25	29	-4
Full-time Equivalency					
Noise Standards Development:					
Noise Standards Development.....	20	24	20	20	...
Noise Control Technology Assessment and Criteria Development.....					
	28	28	22	22	+1
Total.....	48	52	42	42	+1

Budget Request

The Agency requests a total of \$2,271,400 and 29 permanent workyears for 1982, a decrease of \$2,947,000 from 1981. Included in this total is \$1,906,000 for Salaries and Expenses and \$365,400 for Abatement, Control and Compliance, with decreases of \$75,000 and \$3,871,600 respectively. These reductions are a result of the orderly phase-out of the noise control program in 1982. The increase in positions reflects that in 1982 all phase-down activities for the noise program will be supported by this subactivity.

N-7

Program Description

This program focuses on the development of regulations that will reduce harmful noise and its health effects through the gathering of health effects to determine exposure and health and welfare protection and for specific private and public sector technology development available technology, and assessments of economic costs and benefits of conduct of a noise health and welfare effect.

Noise Standards Development

The objective of this activity is to develop regulations which are major contributors to environmental noise and to the achievement of overall environmental levels below Ldn 75 dB as soon as possible.

Under Sections 6 and 8 of the Noise Control Act, the Agency develops and promulgates regulations on major noise sources through the use of labeling requirements for newly manufactured products for regulation, economic and technical health, welfare, and other benefits derived activities include the preparation of notices such as EIS's and economic assessments, for

Noise Control Technology Assessment and Criteria Development

The objective of this activity is to provide regulation and State and local control effort of noise health effects and availability also includes overall strategy development.

Specific activities include the development of general exposure to noise; economic, social and health impacts of noise of advanced and/or future noise control technology of noise abatement actions, including Federal agency control conducted by other Federal agency development of an overall noise control strategy; the continuation of the noise health effects

NOISE STANDARDS DEVELOPMENT**1980 Accomplishments**

1980 resources included \$1,621,800 in cost for the development of noise emission and labeling standards. In 1980 was the promulgation of the court-ordered (four source standards). In addition, development led to the promulgation of emission regulations. Work was continued on the Low Noise Emission studies for product labeling. Also, five noise standards were completed.

N-8

Program Description

This program focused on the development and promulgation of emission and labeling regulations that will reduce harmful noise emissions from new products. These regulations are developed through the gathering and analysis of data on noise and its health effects to determine exposure and levels of noise reduction required for health and welfare protection and for specific regulatory actions. Evaluations of private and public sector technology development are performed to determine best available technology, and assessments of economic, environmental and health data are made to ascertain the costs and benefits of regulation. This program also includes conduct of a noise health and welfare effects investigation program.

Noise Standards Development

The objective of noise product regulation is to effectively regulate products which are major contributors to environmental noise exposure. Such regulation would contribute to the achievement of overall environmental noise control goals of reducing environmental levels below Ldn 75 dB as soon as possible and ultimately below Ldn 65 dB.

Under Sections 6 and 8 of the Noise Control Act, Environmental Protection Agency develops and promulgates regulations to control noise from products which are major noise sources through the use of noise emission limitations and/or noise labeling requirements for newly manufactured products. The analysis leading to and supporting these regulations includes the preliminary investigation of potential products for regulation, economic and technological feasibility and the evaluation of health, welfare, and other benefits derived from specific product regulation. Other activities include the preparation of necessary background and supporting material, such as EIS's and economic assessments, for the promulgation of standards.

Noise Control Technology Assessment and Criteria Development

The objective of this activity is to provide support to EPA for noise product regulation and State and local control efforts through investigations and documentation of noise health effects and availability of noise control technology. This also includes overall strategy development for national noise control efforts.

Specific activities include the development of health and welfare criteria for the assessment of general exposure to noise; the assessment of the environmental, economic, social and health impacts of noise abatement options; and the assessment of advanced and/or future noise control technology for the development and evaluation of noise abatement options, including coordination and evaluation of noise research and control conducted by other Federal agencies. Other activities encompass the development of an overall noise control strategy and subsequent substrategies, and the continuation of the noise health effects program.

NOISE STANDARDS DEVELOPMENT1980 Accomplishments

1980 resources included \$1,821,800 in contract support. These funds were used for the development of noise emission and labeling regulations. A major accomplishment for 1980 was the promulgation of the court-ordered Interstate Rail Carrier Revision (four source standards). In addition, developmental work was completed which could lead to the promulgation of emission regulations in 1981 for buses and motorcycles. Work was continued on the Low Noise Emission products regulation and strategy studies for product labeling. Also, five noise source studies begun in previous years were completed.

Interest -
Decrease -
1980 vs 1979

-577

-2,201

-1

-1,670

-75

-3,571

-3,947

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1981 Overview

In 1981, the Agency has allocated a total of \$3,333,800 and 14 permanent work-years to this program, of which \$1,231,500 is for Salaries and Expenses and \$2,102,300 is extramural purposes under the Abatement, Control and Compliance appropriation.

The 1981 program provides for those activities that are necessary to initiate the orderly phase out of the noise regulatory program. These activities include the compiling of current regulatory information for appropriate transfer to States & localities.

1981 Explanation of Change from Budget Estimate

The net decrease of \$300,800 results from several actions, as follows:

- Shortly after the 1981 budget estimate was submitted, President Carter transmitted revisions to the budget (House Document 95-294); these revisions resulted in a decrease of \$7 million to EPA's request for Salaries and Expenses. The reduction applied to this activity is \$6,400.
- The Congress reduced agencywide consulting services by \$3.8 million; a decrease of \$23,100 was applied to this activity.
- The Congress applied a general reduction of \$7.3 million to the Abatement, Control and Compliance appropriation; a decrease of \$41,900 was applied to this activity.
- An increase of 13,100 results from the cost of the October 1980 pay raise and is included in a proposed supplemental appropriation.
- Reorganizations to realign salary and related costs to meet on-board needs resulted in a transfer of \$268,100 to noise control technology assessment and criteria development (\$161,300); noise strategies implementation (\$54,700); and noise Federal agency coordination (\$52,100).
- A transfer of \$5,300 was made to noise standards development for funds.
- A transfer of \$40,000 was made to noise control technology assessment and criteria development (\$15,000); noise strategies implementation (\$30,000); and noise Federal agency coordination (\$5,000) for printing costs.
- A transfer of \$124,500 to noise control technology assessment and criteria development (\$119,500); and to noise strategies implementation (\$5,000), reflecting a decrease in interagency agreements, a shift from grants to contracts, and realignment of contract funds within accounts.
- A transfer of \$18,400 was made to the radiation media in order to support the Radiation Policy Council.
- A transfer of \$10,500 was made to the administrative Law Judges to provide additional resources to support a new program for instituting civil noncompliance penalties under Section 120 of the Clean Air Act.
- OMB Bulletin #81-7, January 24, 1981, "Fiscal Year 1981 Travel Reduction", required agencywide reductions to travel; the total reduction of \$1,793,900 is being used to fund personnel compensation and benefits (PC&B) deficits. The reduction applied to this activity is \$7,400.
- An internal agencywide reduction of \$1,790,800 to other contractual services is being made in order to fund PC&B deficits; the reduction applied to this activity is \$25,000.

- The Department of Housing and Urban Development, 1981, permits a one contract transfer and thereby authority is being implemented by the Development and the Abatement, Control and Compliance appropriation in order to fund this activity 16 \$13,100.

- Agencywide increases are required in order to increase applied to this activity is \$209,800

1982 Plan

The Agency requests a total of \$954,900 program, all of which is for the Salaries and Expenses and are requested for the Abatement, Control and Compliance.

During 1982, the phase out of all regulatory programs will include taking all the necessary legal steps program as well as the transfer of information to initiate regulatory programs where they do not exist.

Change from January Request

This request represents a decrease of \$1.1 million which is from Abatement, Control and Compliance decision to discontinue the noise program as of 1982.

NOISE CONTROL TECHNOLOGY ASSESSMENT AND CRITERIA1980 Accomplishments

1980 resources included approximately \$2.5 million were used for development of information (both auditory and non-auditory), technology assessment substrategies.

A major accomplishment in 1980 included a primary study which released noise to a 20 year health effects activities included a report on noise on children's hearing. After four years hearing thresholds of children, the preliminary thresholds at auditory frequencies associated with machinery and power tools. Seven research projects on the understanding of the effects of noise were health effects research plan as well as a data completed. Also, an updated report on Federal covering research program of approximately 20

During 1980, work was initiated on the use of quiet tires technology demonstrations (incl. interaction investigation, technology assessment). A significant accomplishment in the quiet truck heavy trucks to about 72 dBA.

Five joint technology demonstrations with other agencies included: quiet propeller (NASA), high speed machinery (NAVY), electric generating plant (EPA projects (ARMY). The general construction site

The construction site substrategy was in

The Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1982, permits a one percent transfer authority between appropriations. This one percent authority is being implemented by transferring funds from the Research and Development and the Abatement, Control and Compliance appropriations to the Salaries and Expenses appropriation in order to fund PCB deficits; the reduction applied to this activity is \$13,100.

Agencywide increases are required in order to fund the PCB deficits; the increase applied to this activity is \$209,800.

1982 Plan

The Agency requests a total of \$954,800 and 14 permanent workyears for this program, all of which is for the Salaries and Expenses appropriation. No resources are requested for the Abatement, Control and Compliance appropriation.

During 1982, the phase out of all regulatory activities will be completed. This includes fixing all the necessary legal steps for termination of EPA's noise regulatory program as well as the transfer of information necessary for the States and localities to initiate regulatory programs where they deem appropriate.

Change from January Request

This request represents a decrease of \$1,440,000 from the January budget, all of which is from Abatement, Control and Compliance. This reduction reflects the decision to discontinue the noise program at the end of 1982.

NOISE CONTROL TECHNOLOGY ASSESSMENT AND CRITERIA DEVELOPMENT

1980 Accomplishments

1980 resources included approximately \$2,050,400 in contract support. These funds were used for development of information on health and welfare effects of noise (both auditory and non-auditory), technology demonstrations, and development of noise abatement substrategies.

A major accomplishment in 1980 included a report on the University of Miami primate study which related noise to a 30 percent increase in blood pressure. Other health effects activities included a report on the longitudinal study on the effects of noise on children's hearing. After four years of longitudinally tracking the hearing thresholds of children, the preliminary findings reveal a trend of lower thresholds at auditory frequencies associated with exposure to sources such as farm machinery and power tools. Seven research reports and studies designed to improve the understanding of the effects of noise were completed. In addition, a five year health effects research plan as well as a detailed cardiovascular research plan were completed. Also, an updated report on Federal research in noise effects was completed covering research program of approximately 20 agencies over the past three years.

During 1980, work was initiated on the quiet house program (a project designed to demonstrate the synergism between energy conservation and noise reduction in residential buildings), and work continued on the quiet heavy trucks, quiet engines, and quiet tires technology demonstrations including initiation of a tire/surface interaction investigation. Technology assessment began on truck cooling systems. A significant accomplishment in the quiet truck program was the quieting of two heavy trucks to about 72 dBA.

Five joint technology demonstrations with other Federal agencies were in process. These included: quiet propeller (NASA), highway site construction (DOT), shipyard machinery (NAVY), electric generating plant (TVA), and general construction site projects (ARMY). The general construction site demonstration was completed.

The construction site substrategy was in process.

1981 Budget

In 1981, the Agency has allocated a total of \$2,984,400 and 11 permanent work years to this category, of which \$845,400 is for Salaries and Expenses and \$2,139,000 is for extramural purposes under the Abatement, Control and Compliance appropriation.

During 1981, continuing health effects research studies which can be completed before the end of 1981 are to be continued. The results of these studies are to be made available not only to the scientific community, but also to other Federal, State, and local governments for incorporation into their noise control efforts.

All technology research projects are also being brought to completion. Reports and/or summary information are to be prepared for transfer and use by States and localities. The results of interagency demonstrations to determine techniques and technologies for abating noise are also to be packaged for transfer to all interested parties, including other Federal and State agencies.

1981 Explanation of Change from Budget Estimate

The net increase of \$346,900 results from several actions, as follows:

- Shortly after the 1981 Budget estimate was submitted, President Carter transmitted revisions to the budget (House Document 96-294); these revisions resulted in a decrease of \$7 million to EPA's request for Salaries and Expenses. The reduction applied to this activity is \$4,300.

- The Congress applied a general reduction of \$7.5 million to the Abatement, Control and Compliance Appropriation; a decrease of \$55,200 was applied to this activity.

- The Congress reduced agencywide travel costs by \$850,00; a decrease of \$5,800 was applied to this activity.

- An increase of \$14,900 results from the cost of the October 1980 pay raise and is included in a proposed supplemental appropriation.

- Reprogrammings to realign salary and related costs to meet on-board needs resulted in a transfer of \$161,500 from noise standards development.

- A transfer of \$9,200 was made to noise strategies implementation for travel funds.

- A transfer of \$5,000 was made from noise standards development for printing costs.

- A transfer of \$119,800 from noise standards development reflecting a decrease in interagency agreements, shifts from grants to contracts, and realignment of contract funds within accounts.

- A transfer of \$285,100 was made from noise strategies implementation to reflect FTE currently on-board.

- A transfer of \$294,400 was made to noise regional program implementation to carry out the implementation of the Quiet Communities Act.

- OMB Bulletin #81-7, January 24, 1981, required agencywide reductions to travel; a portion used to fund personnel compensation a reduction applied to this activity is \$400.

- Agencywide increases are required in applied to this activity is \$120,400.

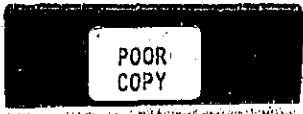
1982 Plan

The Agency requests a total of \$1,316,600 program, of which \$951,200 is for the Salaries for the Abatement, Control and Compliance and

The focus of 1982 activities will be to research studies and technology demonstration as appropriate, for use by other interested parties. The wrap-up of any remaining noise control program phase out of the Noise Control Program by the

Change from January Request

This request represents a decrease of \$1 the January budget, of which \$213,500 is for for Abatement, Control and Compliance. These discontinue the noise program by the end of



OMB Bulletin #21-7, January 24, 1991, "Fiscal Year 1991 Travel Reduction", required agencywide reductions to travel; the total reduction of \$1,791,000 is being used to fund personnel compensation and benefits (PCSB) deficits. The reduction applied to this activity is \$400.

Agencywide increases are required in order to fund the PCSB deficits; the increase applied to this activity is \$120,400.

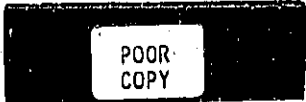
1992 Plan

The Agency requests a total of \$1,316,600 and 15 permanent workyears for this program, of which \$981,200 is for the Salaries and Expenses appropriation and \$335,400 for the Abatement, Control and Compliance appropriation.

The focus of 1992 activities will be to complete all remaining health effects research studies and technology demonstrations. This information will be transferred, as appropriate, for use by other interested parties. Other activities will involve the wrap-up of any remaining noise control projects necessary to achieve complete phase out of the Noise Control Program by the end of 1992.

Change from January Request

This request represents a decrease of \$2,119,600 and 6 permanent workyears from the January budget, of which \$213,500 is for Salaries and Expenses and \$1,906,100 is for Abatement, Control and Compliance. These reductions reflect the decision to discontinue the noise program by the end of 1992.



NOISE

Noise Program Strategies Implementation

	Actual 1981	Budget Estimate 1981	Current Estimate 1981	Estimate 1982	Increase - Decrease + 1982 vs 1981
(dollars in thousands)					
Appropriations					
Noise Control Implementation and Evaluation:					
Salaries and Expenses.....	5992	\$1,032	3861	...	-5851
Abatement, Control and Compliance.....	3,283	3,321	3,289	...	-3,289
Federal Agency Coordination:					
Salaries and Expenses.....	322	299	338	...	-338
Abatement, Control and Compliance.....	202	400	382	...	-382
Noise Regional Program Implementation:					
Salaries and Expenses.....	602	638	811	...	-811
Abatement, Control and Compliance.....	29	93	40	...	-40
Total:					
Salaries and Expenses.....	1,926	1,959	2,010	...	-2,010
Abatement, Control and Compliance.....	3,514	3,774	3,711	...	-3,711
Grand Total.....	5,440	5,733	5,721	...	-5,721
Permanent Positions					
Noise Control Implementation and Evaluation.....	18	22	22	...	-22
Federal Agency Coordination...	7	8	8	...	-8
Noise Regional Program Implementation.....	13	13	14	...	-14
Total.....	38	43	44	...	-44
Full-time Equivalency					
Noise Control Implementation and Evaluation.....	35	37	27	...	-27
Federal Agency Coordination...	8	8	11	...	-11
Noise Regional Program Implementation.....	21	21	29	...	-29
Total.....	64	66	67	...	-67

Budget Request

Consistent with the Agency's decision to phase-out the Noise Control program in 1982, no resources are requested for 1982.

N-13

Program Description

This program provides assistance to State implementation of noise control programs. These programs are essential if the Nation is to protect the public health and welfare. The Act, as amended by the Quiet Communities Act, emphasizes the development of noise control programs to substantially increase the number of programs with special emphasis on lessening (motorcycles, trucks, buses). Assistance is provided for source control (property line standards), zoning planning (zoning, land use planning, etc.).

This program also includes the review of noise emissions at Federal facilities and the overall coordination of all Federal programs. The objective of this program is to bring the agencies to bear on the noise problem in a coordinated manner as the Federal Highway Administration, Urban Mass Transit Administration, the Department of Defense.

Noise Control Implementation and Evaluation

Under the Noise Control Act, as amended, the Environmental Protection Agency delivers assistance to encourage the development of effective noise control programs. EPA regulations for State and local enforcement of in-use control programs, including Federal anti-tampering and

This program provides funding for limited agreements to States and localities and the development of programs for State and local use. Special programs to assist local communities start or improve existing local programs. Other EPA assistance includes the use of local noise control programs (ECHO) program (use of local noise control program "tools", e.g., the noise control demonstration and assistance located at ten universities.

Federal Agency Coordination

The activities of this program are direct responsibilities for noise control are met. Federal agencies to consider and include, who practices in their programs and comply with Federal requirements; coordinating noise control programs at the process of other Federal facilities; and Federal environmental impact statements. Particular attention is given to carrying out

Noise Regional Implementation

The regional offices occupy a key role in local programs.

POOR
COPY

Program Description

This program provides assistance to States and localities in the development and implementation of noise control programs. Effective State and local noise control programs are essential if the Nation is to reduce noise to levels commensurate with the protection of public health and welfare. In recognition of this need, the Noise Control Act, as amended by the Quiet Communities Act, calls for EPA to assist State and local governments in the development of noise control programs. The objective of EPA's program is to substantially increase the number of communities having effective noise control programs with special emphasis on lessening the impact of noise from motor vehicles (motorcycles, trucks, autos). Assistance is also provided in the areas of stationary source control (property line standards), construction site noise control, noise abatement planning (zoning, land use planning, airport planning), and public education.

This program also includes the review of the implementation of regulatory requirements for which the Federal Government has primary responsibility (i.e., the control of noise emissions at Federal facilities and review of EIS's for noise implications, and the overall coordination of all Federal programs for noise abatement and control). The objective of this program is to bring the major noise authorities of other Federal agencies to bear on the noise problem in a total national effort. Included are such agencies as the Federal Highway Administration, the Federal Aviation Administration, the Urban Mass Transit Administration, the Department of Housing and Urban Development, and the Department of Defense.

Noise Control Implementation and Evaluation

Under the Noise Control Act, as amended by the Quiet Communities Act of 1978, the Environmental Protection Agency delivers assistance to States and localities in order to encourage the development of effective noise control. Effective State and local programs are needed to complement EPA regulations for major sources of noise. This will include State and local enforcement of in-use controls which supplement EPA's manufacturing controls, including Federal anti-counterfeiting and recall provisions.

This program provides funding for limited financial assistance through cooperative agreements to States and localities and the design and administration of assistance programs for State and local use. Special emphasis is placed on helping States initiate programs to assist local communities start noise control programs and to strengthen existing local programs. Other EPA assistance includes the Each Community Helps Other (ECHO) program (use of local noise control experts to help other communities), development of State and local program "tools", e.g., model laws and codes, administration of the noise control demonstration and assistance program, and Technical Assistance Centers located at ten universities.

Federal Agency Coordination

The activities of this program are directed toward assuring that Federal Government responsibilities for noise control are met. Such activities include assisting other Federal agencies to consider and include, where appropriate, noise abatement and control practices in their programs and comply with Federal, State, interstate, and local requirements; coordinating noise control programs carried out by Federal agencies; monitoring the progress of other Federal facilities' noise abatement activities; and reviewing Federal environmental impact statements insofar as their noise impacts are concerned. Particular attention is given to carrying out the President's Urban Noise Initiative.

Noise Regional Implementation

The regional offices occupy a key role in the development of effective State and local programs.

Increase -
Decrease -
1981 vs 1980

-5861

-3,269

-338

-382

-811

-40

-2,010

-3,711

-5,721

-22

-8

-14

-44

-27

-11

-25

-63

in 1982, no

Specifically, regional offices provide the focal point for interaction with State and local governments, and the development of State and local government capabilities to implement noise abatement activities. As such, they provide technical-financial support to States and localities and oversee the operation of the ten University-based Technical Assistance Centers.

NOISE CONTROL IMPLEMENTATION AND EVALUATION

1980 Accomplishments

1980 resources included \$3,233,200 in extramural support. These funds were used for the development and delivery of both technical and financial assistance (cooperative agreements) to State and localities and for demonstration projects with other Federal agencies.

During 1980, EPA continued to deliver technical assistance to States and localities in developing noise control programs. Delivery mechanisms included the ECHO program (a volunteer program where local noise control experts assist other communities one or two days a month with EPA paying out-of-pocket expenses); LISTEN (a computer program service which processes attitudinal/physical survey data for States and localities); State assignments (temporary government employees serving in State governments to assist in the development of noise control programs); Senior Environmental Employee Program; National ECHO (supplementing state efforts); and community noise counselors program. Other activities included the continuation of the Kansas City, Missouri, Quiet Communities Program (QCP), a research experiment designed to develop and demonstrate the best available techniques for community noise control.

The financial assistance program to States and localities was continued with the award of 36 cooperative agreements, including State start-up, State ECHO, local start-ups and problem identification, urban demonstrations as addressed in the President's Urban Noise Initiatives Program, surface transportation noise control demonstrations, and support for the ten Regional Noise Technical Assistance Centers. These Technical Assistance Centers provided 36 training programs to State and local officials and provided 101 technical assistance actions to communities to increase the growth and effectiveness of the State and local programs.

A major accomplishment during 1980 was the doubling of State noise capabilities with a corresponding increase in the number of active local noise programs.

In addition, the airport technical assistance activities were continued. The Philadelphia Airport Study, a mandate of the Quiet Communities Act of 1973, was completed and forwarded to Congress. The monitoring phase of the National Noise Assessment, a requirement of the Quiet Communities Act of 1978, was initiated.

Also during 1980, two major non-regulatory initiatives in urban noise control were established. These included the Buy Quiet program which establishes a national public sector market for quiet products through cooperative arrangements between State and local government procurement officials and industry, and the soundproofing/weatherization program which combines soundproofing and weatherization activities as a cost effective measure. General public education programs were developed and the State and local grantees were assisted in developing a public education capacity.

1981 Program

In 1981, the Agency has allocated a total of \$4,149,000 and 22 permanent workyears to this program, of which \$863,000 is for Salaries and Expenses and \$3,286,000 is for extramural purposes under the Abatement, Control and Compliance appropriation.

The 1981 program provides for those activities that are necessary for the orderly phase out of State and local assistance programs. Financial support programs to States and Technical Assistance Centers are to be phased out in 1981, with all cooperative agreement awards being made by the end of the fiscal year. Also in 1981, most of the development of technical materials (including model ordinances and training information) are to be completed and the information distributed to States and localities.

N-15

Demonstrations underway to test noise closure and reports prepared for dissemination period.

1981 Explanation of Change from Budget Estimate

The net decrease of \$203,300 results from:

- Shortly after the 1981 budget estimate revisions to the budget (House) a decrease of \$7 million to EPA's reduction applied to this activity.
- The Congress applied a general reduction and Compliance appropriation; a activity.
- The Congress reduced agencywide Sent decrease of \$50,000 was applied to:
- An increase of \$12,700 results from is included in a proposed supplement
- Reprogrammings to realign salary and in a transfer of \$54,700 from noise
- A transfer of \$21,600 was made from control technology (\$9,200) and noise travel funds.
- A transfer of \$30,000 was made from costs.
- A transfer of \$23,000 from noise act agency coordination (\$18,000) reflect shifts from grants to contracts, and
- A transfer of \$293,100 to noise control on-board.
- OMB Bulletin #31-7, January 24, 1981 agencywide reductions to travel; the to fund personal compensation and applied to this activity is \$4,700.
- Agencywide increases are required in increase applied to this activity is

1982 Plan

No resources are requested in 1982. All accomplished with resources in the Environment activity.

Change from January Request

This request represents a decrease of \$ the January Budget, of which \$853,500 is for for Abatement, Control and Compliance. This discontinues the noise program by the end of out are included in the Environmental Noise

Demonstrations underway to test noise control techniques are being brought to a close and reports prepared for dissemination, as available, throughout the phase down period.

1981 Explanation of Change from Budget Estimate

The net decrease of \$203,300 results from several actions, as follows:

- Shortly after the 1981 budget estimate was submitted, President Carter transmitted revisions to the budget (House Document 95-294); these revisions resulted in a decrease of \$7 million to EPA's request for Salaries and Expenses. The reduction applied to this activity is \$6,900.
- The Congress applied a general reduction of \$7.5 million to the Abatement, Control and Compliance appropriation; a decrease of \$55,200 was applied to this activity.
- The Congress reduced agencywide Senior Executive Service bonuses by \$750,000; a decrease of \$40,000 was applied to this activity.
- An increase of \$12,700 results from the cost of the October 1980 pay raise and is included in a proposed supplemental appropriation.
- Reprogrammings to realign salary and related costs to meet on-board needs results in a transfer of \$54,700 from noise standards development.
- A transfer of \$21,600 was made from noise standards development (\$5,300); noise control technology (\$9,200) and noise federal agency coordination (\$7,100) for travel funds.
- A transfer of \$30,000 was made from noise standards development for printing costs.
- A transfer of \$23,000 from noise standards development (\$5,000) and noise federal agency coordination (\$18,000) reflecting a decrease in interagency agreements, shifts from grants to contracts, and realignment of contract funds within account.
- A transfer of \$295,100 to noise control technology to reflect FTE currently on-board.
- OMB Bulletin #51-7, January 24, 1981, "Fiscal Year 1981 Travel Reduction", required agencywide reductions to travel; the total reduction of \$1,795,300 is being used to fund personnel compensation and benefits (PC&B) deficits. The reduction applied to this activity is \$4,700.
- Agencywide increases are required in order to fund the PC&B deficits; the increase applied to this activity is \$56,600.

1982 Plan

No resources are requested in 1982. All remaining aspects of phase out will be accomplished with resources in the Environmental Noise Strategies and Standards subactivity.

Change from January Request

This request represents a decrease of \$3,909,600 and 17 permanent workyears from the January Budget, of which \$853,500 is for Salaries and Expenses and \$3,056,100 is for Abatement, Control and Compliance. These reductions reflect the decision to discontinue the noise program by the end of 1982. All resources for the orderly phase out are included in the Environmental Noise Strategies and Standards subactivity.

FEDERAL AGENCY COORDINATION1980 Accomplishments

1980 resources included \$202,000 in contract support. These funds were used to support interagency agreements with other Federal agencies. The purpose of this activity is to carry out noise control demonstrations and test techniques and incorporate the results of these demonstrations into the appropriate program of Federal agencies, including EPA. EPA funds are matched by contributions from other participating agencies. During 1980, this type of activity included the following demonstrations: off road vehicles, highway noise mitigation, transit mall planning and design (phase I and II), vehicle noise diagnostic inspection methods, bus retrofit, and hearing conservation (model hearing conservation program). Reports were issued in 1980 on off-road vehicles, transit mall planning and design, bus retrofit, and vehicle noise diagnostic inspection methods.

EPA reviewed and commented on a number of important FAA proposed regulations and Advisory Circulars. A major accomplishment in the aviation area in 1980 was the completion of a report on aviation noise which outlined a strategy that could be implemented over the next several years.

1981 Program

In 1981, the Agency has allocated a total of \$720,400 and 8 permanent workyears to this program, of which \$336,400 is for Salaries and Expenses and \$382,000 is for extramural purposes under the Abatement, Control and Compliance appropriation.

These resources are to be used to wind down or complete projects necessary to attain an orderly phase out of Federal coordination efforts. Most ongoing technology demonstrations are to be completed. The results of these demonstrations are to be transferred, as appropriate, to all interested parties including other Federal and State agencies. Aviation studies underway are also to be completed for dissemination to States and localities.

1981 Explanation of Change for Budget Estimate

The net increase of \$31,300 results from several actions, as follows:

- Shortly after the 1981 budget estimate was submitted, President Carter transmitted revisions to the budget (House Document 96-294); these revisions resulted in a decrease of \$7 million to EPA's request for Salaries and Expenses. The reduction applied to this activity is \$1,900.
- An increase of \$1,300 results from the cost of the October 1980 pay raise and is included in a proposed supplemental appropriation.
- Reprogrammings to realign salary and related costs to meet on-board needs resulted in a transfer of \$30,100 from noise standards development.
- A transfer of \$7,100 was made to noise strategies implementation for travel funds.
- A transfer of \$5,000 was made from noise standards development for printing costs.
- A transfer of \$18,000 to noise strategies implementation reflecting a decrease in interagency agreements, shifts from grants to contracts, and realignment of contract funds within accounts.

H-17

- OMB Bulletin #31-7, January 24, 1981 required agencywide reductions to be applied to functional personnel costs. The reduction applied to this activity is \$1,900.
- Agencywide increases are required in 1982. An increase applied to this activity is \$1,300.

1982 Plan

No resources are requested in 1982. All accomplishments with resources in the Environment activity.

Change from January Request

This request represents a decrease of \$5 million from the January request, of which \$31,700 is for Abatement, Control and Compliance. These are the noise program by the end of 1982. All are in the Environmental Noise Strategies and Six

NOISE REGIONAL PROGRAM IMPLEMENTATION1980 Accomplishments

In 1980, \$23,700 was for extramural purposes included expanded responsibilities for the program. This also included detailed review, cooperative agreements with State and local agencies to administer the technical assistance program; on the development of the Technical Assistance that these programs can serve as the technical and localities. Other activities carried out in Kansas City, review of EIS's, the noise and local officials, equipment loans, the proposal communities and public education on noise they continued to manage the EPA ECHO program in their States.

1981 Program

In 1981, the Agency has allocated a total to this program, for which \$810,700 is for Salaries and Expenses under the Abatement, Control and Compliance appropriation.

In 1981, the program provides for those activities of the Region's State and local technical assistance.

1981 Explanation of Change from Budget Estimate

The net increase of \$159,000 results from

- Shortly after the 1981 budget estimate was submitted, President Carter transmitted revisions to the budget (House Document 96-294); these revisions resulted in a decrease of \$7 million to EPA's request for Salaries and Expenses. The reduction applied to this activity is \$1,900.
- The Congress reduced agencywide transfers to this activity by \$1,300.

H-1

- OMB Bulletin 481-7, January 24, 1981, "Fiscal Year 1981 Travel Reduction", requires agencywide reductions to travel; the total reduction of \$1,725,722 is being used to fund personnel compensation and benefits (PC&B) deficits. The reduction applied to this activity is \$3,200.
- Agencywide increases are required in order to fund the PC&B deficits; the increase applied to this activity is \$1,100.

1982 Plan

No resources are requested in 1982. All remaining aspects of phase out will be accomplished with resources in the Environmental Noise Strategies and Standards sub-activity.

Change from January Request

This request represents a decrease of \$646,000 and 6 permanent workyears from the January budget, of which \$351,700 is for Salaries and Expenses and \$294,300 is for Abatement, Control and Compliance. These decreases reflect the decision to discontinue the noise program by the end of 1982. All resources for the orderly phaseout are included in the Environmental Noise Strategies and Standards subactivity.

NOISE REGIONAL PROGRAM IMPLEMENTATION

1980 Accomplishments

In 1980, \$28,700 was for extramural purposes. Regional accomplishments in 1980 included expanded responsibilities for the management of the cooperative agreement program. This also included detailed review, award and participation and follow-up on cooperative agreements with State and local agencies. The Regions also continued to administer the technical assistance program to State and local governments with emphasis on the development of the Technical Assistance Centers and State-run ICMD programs so that these programs can serve as the technical assistance delivery mechanism to States and localities. Other activities carried out included the management of the OCP expertment in Kansas City, review of EIS's, the holding of noise abatement workshops for State and local officials, equipment loans, the providing of direct technical assistance to local communities and public education on noise abatement and control. In addition, they continued to manage the EPA ICMD program and assisted some States in taking over the EPA ICMD program in their States.

1981 Program

In 1981, the Agency has allocated a total of \$850,600 and 14 permanent workyears to this program, for which \$810,700 is for Salaries and Expenses and \$39,900 is for extramural purposes under the Abatement, Control and Compliance appropriation.

In 1981, the program provides for those activities that are necessary for the phase out of the Region's State and local technical assistance program.

1981 Explanation of Change from Budget Estimate

The net increase of \$159,000 results from several actions, as follows:

- Shortly after the 1981 budget estimate was submitted, President Carter transmitted revisions to the budget (House Document 96-234); these revisions resulted in a decrease of \$7 million to EPA's request for Salaries and Expenses. The reduction applied to this activity is \$3,700.
- The Congress reduced agencywide travel costs by \$850,000; a decrease of \$200 was applied to this activity.

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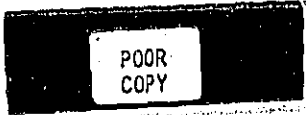
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- The request reduces agencywide consulting services by \$3.8 million; a decrease of \$43,900 was applied to this activity.
- An increase of \$11,600 results from the cost of the October 1980 pay raise and is included in a proposed supplemental appropriation.
- Reprogrammings to realign salary and related costs to meet on-board needs resulted in a net transfer of \$42,800 to water quality; water treatment operations and maintenance (\$5,000); permit issuance (\$400); pesticides use management (\$13,000); pesticides enforcement (\$5,000); management and support - regional counsel (\$10,500); regional management (\$18,300); administrative management (\$12,000); and from solid waste hazardous waste management regulatory strategies implementation (\$13,700), and hazardous waste enforcement (\$9,200).
- A transfer of \$13,000 was made from water quality NEPA compliance - municipal waste facility construction to realign contract funds and support interagency agreements.
- A transfer of \$16,000 was made to noise regional program implementation to support SIP efforts.
- A transfer of \$31,300 was made to ambient air quality monitoring to support the air quality monitoring program.
- A transfer of \$37,800 was made to air quality management to support SIP activities in the areas of technical review of SIPs, SIP certification review and docket control.
- A transfer of \$17,300 was made from ambient air quality monitoring to support the Senior Environmental Employment Program.
- A transfer of \$294,400 was made from noise control technology assessment and criteria development to carry out the implementation of the Quiet Communities Act.
- OMB Bulletin #81-7, January 24, 1981, "Fiscal Year 1981 Travel Reduction", required agencywide reductions to travel; the total reduction of \$1,795,900 is being used to fund personal compensation and benefits (PCAB) deficits. The reduction applied to this activity is \$4,300.
- An internal agencywide reduction of \$6,980,000 to equipment costs is being made in order to fund PCAB deficits; the reduction applied to this activity is \$900.
- An internal agencywide reduction of \$1,790,000 to other contractual services is being made in order to fund PCAB deficits; the reduction applied to this activity is \$4,400.
- Agencywide increases are required in order to fund the PCAB deficits; the increase applied to this activity is \$12,500.

1982 Plan

No resources are requested in 1982. Any remaining aspects of phase-out will be handled by EPA headquarters noise control program.

Change from January Request

This request represents a decrease of \$1,045,900 and 17 permanent workyears from the January budget, of which \$853,700 is for Salaries and Expenses; and \$192,200 is for Abatement, Control and Compliance. The reductions reflect the decision to discontinue the noise program by the end of 1982.

N-19

	Noise
	Actual 1980
Abatement, Control and Compliance.....	\$878
Total.....	1,124
Permanent Positions.....	22
Full-time Equivalency.....	32

Budget Request

The Agency requests no funds and no permanent

Program Description

The long-range goals and major objectives to assure that regulated products distributed in new product noise emission standards and information of the Noise Control Act of 1972. Additionally, governments in the development of effective noise regulated products in use.

1980 Accomplishments

In 1980, the primary emphasis of the noise abatement and, where necessary, taking enforcement: six compressor and medium and heavy-duty trucks for implementation of the informational labeling the standards for truck-mounted solid waste comp.

Enforcement activities in 1980 included re-monitoring of 8 production verification tests in of 10 manufacturers' records/facilities; inspect monitoring of 3 labeling verification tests; and Enforcement assistance and guidance was provided programs, and 2 State/local guidance packages were inventories of regulated manufacturers were given solid waste compressor regulations.

The 1980 resources included \$245,500 for cor surveillance tests for portable air compressors & protector testing; to assure quality performance tests under the new regulations; State and local support; and production verification report review

N-20

NOISE
Noise Enforcement

	Actual 1980	Budget Estimate 1981	Current Estimate 1981	Estimate 1982	Increase + Decrease - 1982 vs 1981
(dollars in thousands)					
Appropriation					
Salaries and Expenses.....	\$878	\$716	\$893	...	-893
Equipment, Control and Compliance.....	246	225	213	...	-213
Total.....	1,124	941	1,106	...	-1,106
Permanent Positions.....	22	19	21	...	-21
Full-time Equivalency.....	32	35	29	...	-29

Budget Request

The Agency requests no funds and no permanent workyears for 1982.

Program Description

The long-range goals and major objectives of the noise enforcement program have been to assure that regulated products distributed in commerce comply with Sections 6 and 8 (new product noise emission standards and information labeling requirements respectively) of the Noise Control Act of 1972. Additionally, assistance has been given to State/Local governments in the development of effective noise enforcement programs to address compliance of regulated products in use.

1980 Accomplishments

In 1980, the primary emphasis of the noise enforcement program was monitoring compliance and, where necessary, taking enforcement action under the standards for portable air compressors and medium and heavy-duty trucks. In addition, preparations were made for implementation of the informational labeling requirements for hearing protectors and the standards for truck-mounted solid waste compactors.

Enforcement activities in 1980 included review of 700 production verification reports; monitoring of 8 production verification tests and 11 selective enforcement audits; inspection of 10 manufacturers' records/facilities; inspection of 8 manufacturers' test capabilities; monitoring of 3 labeling verification tests; and conducting 2100 in-use surveillance tests. Enforcement assistance and guidance was provided to 16 state and local noise enforcement programs, and 2 State/Local guidance packages were developed. Enforcement strategies and inventories of regulated manufacturers were developed for the hearing protector labeling and solid waste compactor regulations.

The 1980 resources included \$245,500 for contracts which were used to conduct in-use surveillance tests for portable air compressors and medium and heavy duty trucks, and hearing protector testing; to assure quality performance by laboratories which conduct compliance tests under the new regulations; State and local enforcement guidance development; technical support; and production verification report review.



1981 Program

In 1981, the Agency has allocated a total \$1,108,300 and 31 permanent workyears to this program of which \$932,500 is for the Salaries and Expenses appropriation and \$175,800 is for contractual purposes under the Abatement, Control and Compliance appropriation. Extraneous funds will be used to support the State/local noise enforcement effort (especially for site-sounding and in-use noise control requirements which supplement federal product regulations); evaluate and summarize production verification reports; acquire products for investigative testing; provide for engineering and technical support services; continue in-use surveillance testing of regulated products, and surveillance testing of hearing protectors subject to labeling requirements.

Because the noise enforcement program is requesting no resources in 1982, operations will include taking those steps necessary to insure an orderly phase-out of the program.

1981 Explanation of Changes from Budget Estimates

The net increase of \$30,400 results from several actions, as follows:

- Shortly after the 1981 budget estimate was submitted, President Carter transmitted revisions to the budget (House Document 96-294); these revisions resulted in a decrease of \$7 million to EPA's request for Salaries and Expenses. The reduction applied to this activity is \$4,100.
- The Congress reduced agencywide travel costs by \$850,000; a decrease of \$1,800 was applied to this activity.
- The Congress reduced agencywide consulting services by \$3.8 million; a decrease of \$6,300 was applied to this activity.
- The Congress applied a general reduction of \$7.5 million to the Abatement, Control and Compliance appropriations; a decrease of \$6,600 was applied to this activity.
- An increase of \$12,500 results from the cost of the October 1980 pay raise and is included in a proposed supplemental appropriation.
- Reprogramming to realign salary and related costs to meet on board needs resulted in a net transfer of \$47,600 from water quality permit issuance.
- OMB Bulletin #81-7, January 24, 1981, "Fiscal Year 1981 Travel Reduction", required agencywide reductions to travel; the total reduction of \$1,795,900 is being used to fund personnel compensation and benefits (PCAB) deficits. The reduction applied to this activity is \$3,900.
- An internal agencywide reduction of \$6,550,000 to equipment costs is being made in order to fund PCAB deficits; the reduction applied to this activity is \$13,800.
- An internal agencywide reduction of \$1,790,800 to other contractual services is being made in order to fund PCAB deficits; the reduction applied to this activity is \$1,100.
- The Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1981, permits a one percent transfer authority between appropriations. This one percent authority is being implemented by transferring funds from the Research and Development and the Abatement, Control and Compliance appropriations to the Salaries and Expenses appropriation in order to fund PCAB deficits; the reduction applied to this activity is \$5,200.
- Agencywide increases are required in order to fund the PCAB deficits; the increase applied to this activity is \$147,300.

1982 Plan

No resources are requested in 1982, consist towards a primary state and local government role.

Agency from January Request

This request represents a decrease of \$1,320,000 from the January budget, of which \$1,101,000 is for Abatement, Control and Compliance. This decrease is for noise enforcement activities and a shift in employment program.

1982 Plan

no resources are requested in 1982, consistent with the shift in Agency policy towards a primary state and local government role in reducing levels of environmental noise.

Change from January Request

This request represents a decrease of \$1,326,800 and 19 permanent workyears from the January budget, of which \$1,101,000 is for Salaries and Expenses and \$225,800 is for Abatement, Control and Compliance. This decrease represents a phase-out of Federal noise enforcement activities and a shift in emphasis to State and local noise enforcement programs.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
AND CERTAIN INDEPENDENT AGENCIES APPROPRIATIONS
FOR FISCAL YEAR 1982

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS

FIRST SESSION
ON

H.R. 4034

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENT
OF HOUSING AND URBAN DEVELOPMENT, AND FOR SUNDRY
INDEPENDENT AGENCIES, BOARDS, COMMISSIONS, CORPORA-
TIONS, AND OFFICES FOR THE FISCAL YEAR ENDING SEP-
TEMBER 30, 1982, AND FOR OTHER PURPOSES

PART 1—(Pages 1-1062)

AMERICAN BATTLE MONUMENTS COMMISSION
CONSUMER PRODUCT SAFETY COMMISSION
DEPARTMENT OF DEFENSE—CIVIL
Department of the Army: Cemetery Expenses
DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Consumer Affairs
DEPARTMENT OF THE TREASURY
Office of Revenue Sharing
Office of New York City Finance
ENVIRONMENTAL PROTECTION AGENCY
EXECUTIVE OFFICE OF THE PRESIDENT
Council on Environmental Quality
Office of Science and Technology Policy
U.S. Regulatory Council
FEDERAL EMERGENCY MANAGEMENT AGENCY
FEDERAL HOME LOAN BANK BOARD
GENERAL SERVICES ADMINISTRATION
Consumer Information Center
NATIONAL CONSUMER COOPERATIVE BANK
NATIONAL CREDIT UNION ADMINISTRATION
Central Liquidity Facility
NATIONAL INSTITUTE OF BUILDING SCIENCES
SELECTIVE SERVICE SYSTEM
VETERANS ADMINISTRATION

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE

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WASHINGTON: 1982

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Washington, D.C. 20402

RADIATION

OUR 1982 REQUEST FOR THE RADIATION PROGRAM INCLUDES \$12.9 MILLION AND 160 WORKYEARS REFLECTING A DECREASE OF 54.3 MILLION AND 26 WORKYEARS. DECREASES IN THIS PROGRAM ARE PRIMARILY REFLECTIVE OF THE DEFERRAL OF CLEAN AIR ACT REGULATIONS DEVELOPMENT. EFFORTS TO DATE HAVE CENTERED ON CHARACTERIZING THE HAZARDS OF AIRBORNE RADIONUCLIDES AND ON ESTABLISHING REGULATORY PRIORITIES. OTHER REDUCTIONS INCLUDE THE ASSUMPTION OF THE RADIATION POLICY COUNCIL RESPONSIBILITIES BY ITS MEMBER ORGANIZATIONS. THE CURRENT CAPABILITY OF THE AGENCY TO RESPOND TO RADIOLOGICAL EMERGENCIES, SUCH AS THREE MILE ISLAND, IS MAINTAINED.

NOISE

IN 1982 WE ARE REVISING OUR POLICY WITH RESPECT TO THE FEDERAL EFFORT TO REDUCE NOISE EXPOSURE. WE PLAN TO PHASE OUT THE EPA NOISE CONTROL PROGRAM BY THE END OF 1982. THIS DECISION RESULTS FROM OUR DETERMINATION THAT THE BENEFITS OF NOISE CONTROL ARE HIGHLY LOCALIZED AND THAT THE FUNCTION OF NOISE CONTROL CAN BE ADEQUATELY CARRIED OUT AT THE STATE AND LOCAL LEVEL WITHOUT THE PRESENCE OF A FEDERAL PROGRAM. THEREFORE, RESOURCES FOR NOISE IN 1982 WILL DECREASE BY 60 WORKYEARS AND \$10.8 MILLION.

INTERDISCIPLINARY

THE PRESIDENT'S 1982 BUDGET REQUESTS 134 WORKYEARS AND \$15.3 MILLION FOR THE INTERDISCIPLINARY PROGRAM, AN INCREASE OF 14 WORKYEARS AND \$4.7 MILLION. ENERGY FACILITY REVIEW AND PERMITTING RECEIVES AN INCREASE OF 24 WORKYEARS AND \$4.5 MILLION PRIMARILY TO ENABLE THE AGENCY TO ACCELERATE THE ISSUANCE OF ITS PERMITS FOR ENERGY PROJECTS AND TO ALSO AID OTHER FEDERAL AGENCIES IN THEIR PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS FOR NEW ENERGY PROJECTS. OTHER ENVIRONMENTAL IMPACT STATEMENT PREPARATION AND REVIEW CONTINUE AT THE 1981 LEVELS. ALTHOUGH WORKYEARS DECREASE BY ELEVEN, RESEARCH THAT WILL DEVELOP METHODS FOR PREDICTING AND MEASURING BENEFITS OF ENVIRONMENTAL CONTROLS CONTINUES.

TOXIC SUBSTANCES

IN 1982 OUR TOXIC SUBSTANCE PROGRAM IS \$98.2 MILLION AND 738 WORKYEARS. THIS REFLECTS AN INCREASE OF 10 WORKYEARS AND A DECREASE OF \$5.8 MILLION FROM OUR 1981 LEVELS. AN INCREASE OF 18 WORKYEARS SUPPORTS THE HIGH PRIORITY GIVEN TO THE ASSESSMENT OF NEW CHEMICALS, WITH THE PREMANUFACTURE REVIEW PROCESS RECEIVING THE MAJORITY OF THAT INCREASE. THE AGENCY ALSO CONTINUES TO GIVE HIGH PRIORITY TO THE IMPLEMENTATION OF THE TOXICS INTEGRATION STRATEGY.

AN INCREASE IN THE NUMBER OF RULES PROMULGATED UNDER THE TOXIC SUBSTANCES CONTROL ACT (TSCA) THAT REQUIRE ENFORCEMENT IN 1982 REQUIRES AN INCREASE OF 26 WORKYEARS FOR TOXICS ENFORCEMENT. AN ADDITIONAL \$25 MILLION IN TOXICS RESEARCH SUPPORTS THE ESTABLISHMENT OF A QUALITY ASSURANCE PROGRAM AND ADDITIONAL HEALTH EFFECTS STUDIES IN NEUROTOXICOLOGY AND GENETIC TOXICOLOGY.

Assistance

1982
(in thousands of dollars)

0

700

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65

400

165

from
implementation
of phase-
agreement
of source

from

18

18

18

18

18

12

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5

1/ The increase in technical assistance efforts in the ground water protection is offset by a decrease in the public water systems program (PWS). In PWS all but eight States have primacy. State programs have matured and there is less need for technical assistance.

k/ Increases result from additional assistance to the States in the establishment and operation of data systems related to the Underground Injection Control Program and to the regions and States by developing health criteria documents for contaminants not included in the primary drinking water regulations.

Noise Program Technical Assistance

	1980	1981	1982
	(in thousands of dollars)		
Noise Control Implementation and Evaluation	4,275	4,150	0
Noise Regional Program Implementation	631	851	0
Total.....	4,906	5,001	0

The 1981 program provides for activities necessary for the orderly phase-out of State and local assistance programs, and development of technical materials for distribution to States and localities.

In 1982, the noise control budget represents a major policy change with respect to the Federal effort to reduce noise exposure. This decision results from a determination that the benefits of noise control are highly localized and that the function of noise control can be adequately carried out at the State and local level without the presence of a Federal program. No resources are requested in 1982. All remaining aspects of phase-out will be accomplished with resources in the Environmental Noise Strategies and Standards activity.

Answer: The total regional allocation of resources in FY 1982 for review and testing of Emergency Response plans is 11.5 man-years and no extramural dollars. The total headquarters technical allocation for Emergency Preparedness in FY 1982, including review of plans and plan testing, is 4 man-years.

Question: What Memorandums of Understanding do you have with FEMA relative to your review responsibility?

Answer: The interim FEMA regulation 44 CFR 351, is considered to be an interagency agreement.

NOISE PROGRAM

Question: During FY 1982, you have recommended significant reductions in your Noise Program.

Could you please describe the rationale for recommending such reductions?

Answer: The recommended reductions in FY 1982 are consistent with the Administration's decision to discontinue the Noise Control Program by the end of FY 1982. The requested resources are to be used for the orderly phase out of present activities. An orderly phase out is essential in order to transfer EPA experience in noise control and to facilitate an effective assumption of noise control responsibilities by State and local noise programs.

ECONOMIC INCENTIVES STUDY

Question: During FY 1981, you intend to complete a major report on the advantages and disadvantages of using economic incentives for pollution control. Could you please describe the status of that report and the major conclusions reached to date?

Answer: The Office of Research and Development funded a study at the John F. Kennedy School of Government at Harvard University in 1977 on the subject which resulted in a report delivered in early 1981 entitled Incentive Arrangements for Environmental Protection. The study was undertaken as an attempt to take a fresh new look at the incentive issue by a group with a broad perspective who had not previously studied it.

The study focuses on three case studies on the use of economic incentives, namely, regulating aircraft noise, airborne benzene, and prevention of significant deterioration. The study's more general conclusions appear to be that there is a strong rationale for using economic incentives for the following reasons:

- o The cost of achieving any increment of pollution control is minimized;
- o Pollution control is carried only to the point where the cost of control equals the price charged for

pollution--in the case of a is accurately set to reflect the economic benefits and c balanced;

- o Whoever pollutes pays the c this pollution; and
- o Revenue is generated which r reparations, and protection.

The report also appears to conc tant advantages to using emission r:

With regard to the implementat: the study finds that charges should damages rather than to emissions so ants is taken into account. In that could exercise an important influenc: polluting activities.

MINORITY HIGH SCHOOL AP

Question: The January budg provide 200 minority high school stu at EPA laboratories. What was the program in the January budget?

Answer: The expected cost of a school studies as EPA research appra That figure was derived from an esti \$2 thousand which covers the adminis participating local school districts stipend for the student.

Question: How many such ap be awarded under the revised budget available for this purpose?

Answer: Under the revised budg apprenticeships. Using our cost per thousand, the reduced program will r We have dedicated that amount for th

TOXIC SUBSTANCES INC

Question: Your budget just 1982 you will begin orienting your toward influencing industry to test What mechanisms has EPA used in the industry?

Answer: Our goal for the Toxic (TSCA) testing program is to levate; priority chemicals. To do so, starc designated by the Interagency Testir

Percent Estimate	
March	Change
...	...
20	...
20	...
10,000	...
62	-2
71	-2
2,360	...
2,560	...
2,110	...
11	...
26	...
17	...
8,000	-10,000
8,000	-10,000
7,000	-22,000
...	-142
...	-160
0,536	-1,031,171
4,573	-431,171
5,551	-62,896
3,621	-584
3,130	-687

Summary of Budget Authority
 Obligations, Outlays and Permanent Workyears
 By Media
 (dollars in thousands)

	1982 Budget Request		
	January	March	Change
<u>Air</u>			
Budget Authority.....	255,221	239,123	-16,098
Obligations.....	252,772	236,674	-16,098
Outlays.....	287,832	266,257	-21,575
Permanent Workyears.....	1,912	1,766	-146
Full-time equivalency.....	2,286	2,062	-224
<u>Water Quality</u>			
Budget Authority.....	297,534	247,333	-50,201
Obligations.....	298,428	248,227	-50,201
Outlays.....	409,337	378,677	-30,660
Permanent Workyears.....	2,857	2,426	-431
Full-time equivalency.....	3,495	3,021	-474
<u>Drinking Water</u>			
Budget Authority.....	91,672	87,666	-4,006
Obligations.....	91,198	89,192	-4,006
Outlays.....	71,666	66,333	-5,313
Permanent Workyears.....	550	514	-36
Full-time equivalency.....	672	636	-36
<u>Hazardous Waste</u>			
Budget Authority.....	143,336	119,801	-23,535
Obligations.....	146,762	123,227	-23,535
Outlays.....	83,802	77,583	-6,219
Permanent Workyears.....	713	658	-55
Full-time equivalency.....	1,036	887	-149
<u>Pesticides</u>			
Budget Authority.....	72,134	62,069	-10,065
Obligations.....	73,125	63,060	-10,065
Outlays.....	68,919	63,320	-5,599
Permanent Workyears.....	874	818	-56
Full-time equivalency.....	994	934	-60
<u>Radiation</u>			
Budget Authority.....	16,970	12,888	-4,082
Obligations.....	16,970	12,888	-4,082
Outlays.....	17,082	13,705	-1,377
Permanent Workyears.....	206	160	-46
Full-time equivalency.....	242	191	-51
<u>Noise</u>			
Budget Authority.....	12,759	2,271	-10,488
Obligations.....	12,759	2,271	-10,488
Outlays.....	13,355	12,060	-1,296
Permanent Workyears.....	94	29	-65
Full-time equivalency.....	143	43	-100



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DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT—INDEPENDENT AGENCIES
APPROPRIATIONS FOR 1963

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES
NINETY-SEVENTH CONGRESS
SECOND SESSION

SUBCOMMITTEE ON HUD—INDEPENDENT AGENCIES

EDWARD P. BOLAND, Massachusetts, *Chairman*

BOB TRAXLER, Michigan
LOUIS STOKES, Ohio
LINDY (MRS. HALE) BOGGS, Louisiana
MARTIN OLAV SABO, Minnesota

BILL GREEN, New York
LAWRENCE COUGHLIN, Pennsylvania
C. W. BILL YOUNG, Florida

RICHARD N. MALOW, PAUL E. THOMSON, and DELACROIX DAVIS III, *Staff Assistants*

PART 3

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Environmental Protection Agency	65

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WASHINGTON : 1962

93-542 O

Mrs. BENNETT. May I do that for the record?
Mr. BOLAND. And what you expect to spend in 1983.
[The information follows:]

THREE MILE ISLAND COSTS

Our fiscal year 1982 dollar cost at Three Mile Island will be \$485,000 including salaries; for fiscal year 1983 cost will drop to \$275,000 because many of the fiscal year 1982 costs are one-time equipment purchases. EPA is responsible for monitoring all off-site radionuclide releases through the deployment of an air sampling network and the use of water sampling equipment at all points of water discharge from the Three Mile Island site.

Mr. BOLAND. Did the EPA have any involvement in the recent incident at the Gina Nuclear Plant at Rochester, New York.

Mrs. BENNETT. It was called to our attention. We did not have to send anybody to the scene, but we did monitor the incident through our regional office. It was not necessary for us to take a great deal of active involvement in that.

NOISE PROGRAM

Mr. BOLAND. There is no budget request for the noise program. Last year as part of the March budget estimate, the Administration announced its intention to phase the program out during 1982. A total of \$2,010,000 is available in 1982, but none for 1983.

If there is no organized Federal presence in this particular activity, what sort of problems do you foresee?

Mrs. BENNETT. We don't anticipate any problems, Mr. Chairman.

Mr. BOLAND. Obviously if it's going to be phased out. What about the States developing conflicting and non-complementary regulations with which the industry will have to comply. Are you going to run into that kind of a problem?

Mrs. BENNETT. I don't believe so, Mr. Chairman.

Mr. BOLAND. Would you believe so? I thought I saw you bowing your head.

Mrs. GORSUCH. The potential is there.

Dr. HERNANDEZ. I don't know.

Mrs. GORSUCH. The potential is there for each of the 50 States.

Mr. BOLAND. The Federal noise law, would it preempt the State laws even though there is no longer a Federal noise program after 1982?

Mrs. BENNETT. For certain kinds of things it does. But for certain other kinds of things it does not. The reason that we don't foresee a major disruption or major differences amongst the several States developing these programs is that many of the standards have already been adopted and the numbers are there.

It's just a matter of enforcement. Since the Federal numbers would stand for many of the products of concern, we don't anticipate a multiplicity of State standards would develop. Manufacturers have tended to support the standards in as much as it gives them national uniformity.

AFTERNOON

INTERDISCIPLINAR

Mr. GREEN [presiding]. Good afternoon.
We will now start on the interdisci-
The total 1983 request for the
\$20,738,000. This is an increase of
rent estimate.

Workyears associated with the pr
from 246 in 1982 to 363 in 1983. Th
been revised from \$30,602,000 in the
in the 1982 current estimate.

Since most of this activity is in the
which would outlay rather quickly a
declines \$1 million in the current es-
by one-third?

Mr. KINGHORN. I think the favori-
vide it for the record." You see, we
estimates.

[The information follows:]

OUTLAY ESTI

The March outlay estimates were not acc-
level. The current estimates are based on r-
thority and anticipated outlays. We are cu-
more accurate methodology that will foreca-
Control and Compliance, and Research and
specific obligation rates down to the program

INTERMEDIA RESEA

Mr. GREEN. Turn to the intermedi-
1983 request is \$4,212,000, which r-
below the 1982 current estimate. Th
that a high priority of the explorat-
program is to establish working rela-

What success has the Agency had

Dr. HERNANDEZ. I think it's been
man.

One of them is the review of res-
groups. There is one group known a
Council where we have a group th-
views our research budget vis-a-vis
are doing.

I had a meeting just recently wit-
It was the Industry's Research In-
have offered to meet with us and
search program and ours.

Most of this is in health effects
these people are from companies
who carry on a vigorous research p-

Knowing what the two of us ar-
keep us from developing, testing
but let us supplement what they a-

So that will be a fruitful exchang-

	Actual 1901	January Estimate 1902	March Estimate 1902	Current Estimate 1902	Estimate 1903
Pesticides					
Budget Authority.....	69,199.2	72,133.7	61,700.1	53,730.1	50,702.0
Obligations.....	64,769.8	73,125.0	63,060.0	56,606.0	52,271.0
Outlays.....	50,120.1	68,919.0	63,320.0	60,903.5	57,244.4
Permanent Full-time Workyears.....	807.0	874.1	810.9	744.6	660.9
Total Workyears.....	967.4	993.8	926.2	854.4	744.5
Radiation					
Budget Authority.....	13,403.7	16,969.9	12,807.8	10,378.7	10,361.1
Obligations.....	14,220.6	16,970.0	12,000.0	10,826.0	10,500.0
Outlays.....	12,990.3	17,082.0	15,705.0	11,424.0	11,147.0
Permanent Full-time Workyears.....	187.3	206.0	160.0	149.3	135.1
Total Workyears.....	210.4	241.6	191.4	170.6	159.9
Noise					
Budget Authority.....	12,950.1	12,759.3	2,271.4	2,010.6	...
Obligations.....	12,207.1	12,759.0	2,271.0	2,597.0	40.0
Outlays.....	13,210.2	13,356.0	12,060.0	2,109.4	360.0
Permanent Full-time Workyears.....	89.3	93.5	29.2	25.2	...
Total Workyears.....	120.3	142.9	42.9	37.7	...
Interdisciplinary					
Budget Authority.....	14,300.0	16,011.1	10,993.4	17,717.9	20,730.1
Obligations.....	13,915.9	15,085.0	14,410.0	17,941.0	20,165.0
Outlays.....	14,650.4	32,822.0	30,602.0	20,047.1	22,153.0
Permanent Full-time Workyears.....	106.9	144.8	205.0	196.4	310.3
Total Workyears.....	226.3	170.0	259.0	246.0	363.7
Toxic Substances					
Budget Authority.....	103,160.0	107,640.7	97,016.3	77,377.0	68,604.0
Obligations.....	94,103.8	107,065.0	97,577.0	86,712.0	73,155.0
Outlays.....	97,146.6	60,394.0	63,500.0	60,520.4	60,130.3
Permanent Full-time Workyears.....	690.7	796.7	731.7	606.6	607.7
Total Workyears.....	830.3	912.7	836.8	703.7	607.7

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 FOR
 THE
 YEAR
 ENDING
 1983
 OF
 THE
 STATE
 DEPARTMENT
 OF
 REVENUE
 AND
 TAXATION
 DIVISION
 BOSTON
 MASSACHUSETTS

	ACTUAL 1981	JANUARY ESTIMATE 1982	MARCH ESTIMATE 1982	CURRENT ESTIMATE 1982	ESTIMATE 1983	INCREASE + DECREASE - 1983 VS 1982
NOISE						
(DOLLARS IN THOUSANDS)						
APPROPRIATION						
Salaries & Expenses	\$4,672.5	\$5,279.4	\$1,906.0	\$1,002.1		-\$1,002.1
Abatement Control & Compliance	\$7,534.6	\$7,479.9	\$365.4	\$200.5		-\$200.5
TOTAL, Noise	\$12,207.1	\$12,759.3	\$2,271.4	\$2,010.6		-\$2,010.6
PERMANENT FULL-TIME WORKYEARS	09.3	91.5	29.2	25.2		-25.2
TOTAL WORKYEARS	120.3	142.9	42.9	37.7		-37.7
OUTLAYS	\$13,210.2	\$13,356.0	\$2,060.0	\$2,109.4	\$350.0	-\$1,039.4
PROGRAM HIGHLIGHTS						
Environmental Noise Strategies & Standards						
Salaries & Expenses	\$1,066.4	\$2,119.5	\$1,906.0	\$1,002.1		-\$1,002.1
Abatement Control & Compliance	\$3,710.7	\$3,711.5	\$365.4	\$200.5		-\$200.5
Noise Program Strategies & Implementation						
Salaries & Expenses	\$1,755.0	\$2,050.9				
Abatement Control & Compliance	\$3,720.2	\$3,542.6				

POOR COPY

NOISE

	ACTUAL 1981	JANUARY ESTIMATE 1982	MARCH ESTIMATE 1982	CURRENT ESTIMATE 1982	ESTIMATE 1983	INCREASE + DECREASE - 1981 VS 1982
(DOLLARS IN THOUSANDS)						
Salaries & Expenses	\$3,721.4	\$4,170.4	\$1,906.0	\$1,802.1		-\$1,002.1
Abatement Control & Compliance	\$7,430.9	\$7,264.1	\$365.4	\$200.5		-\$1208.5
ABATEMENT & CONTROL	TOTAL	\$11,152.3	\$11,432.5	\$2,010.6		-\$2,010.6
Noise Enforcement						
Salaries & Expenses	\$951.1	\$1,101.0				
Abatement Control & Compliance	\$103.7	\$225.0				
ENFORCEMENT	TOTAL	\$1,054.8	\$1,326.0			
TOTAL PERMANENT WORKYEARS						
Environmental Noise Strategies & Standards	35.6	34.7	29.2	25.2		-25.2
Noise Program Strategies & Implementation	34.3	39.6				
ABATEMENT & CONTROL	TOTAL	69.9	74.3	25.2		-25.2
Noise Enforcement	19.4	19.2				
ENFORCEMENT	TOTAL	19.4	19.2			

NOISE

	ACTUAL 1981	JANUARY ESTIMATE 1982	MARCH ESTIMATE 1982	CURRENT ESTIMATE 1982	ESTIMATE 1983	INCREASE + DECREASE - 1983 VS 1982
TOTAL WORKYEARS						
Environmental Noise Strategies & Standards	47.6	50.0	42.9	37.7		-37.7

Noise Enforcement
ENFORCEMENT

TOTAL 19.4 19.2
19.4 19.2

NOISE

	ACTUAL 1981	JANUARY ESTIMATE 1982	MARCH ESTIMATE 1982	CURRENT ESTIMATE 1982	ESTIMATE 1983	INCREASE + DECREASE - 1983 VS 1982
TOTAL WORKYEARS						
Environmental Noise Strategies & Standards	47.6	50.0	42.9	37.7		-37.7
Noise Program Strategies & Implementation	52.2	57.6				
ADAPTEMENT & CONTROL TOTAL	99.8	107.6	42.9	37.7		-37.7
Noise Enforcement ENFORCEMENT TOTAL	28.5 28.5	35.3 35.3				

OVERVIEW AND STRATEGY

The 1982 noise control budget represented a major policy change with respect to the Federal effort to reduce noise exposure. As reflected in that budget request, the EPA noise control program is being phased-out by the end of 1982. This decision results from a determination that the benefits of noise control are highly localized and that the function of noise control can be adequately carried out at the State and local level without the presence of a Federal program.

States and localities have shown a significant increase in their ability and desire to develop their own noise control programs. During the last decade, over 1300 municipalities and 24 States have enacted noise control legislation. Of these, 20 States have viable active programs and over 300 local communities have ongoing noise control programs with active enforcement. This dramatic growth (233% in the past five years) convincingly demonstrates that State and local governments can and will deal with environmental noise problems within their jurisdictions.

The major components of EPA's existing noise control effort are promulgation and enforcement of Federal noise regulations, strengthening the capabilities of State and local noise control agencies by providing technical and financial assistance, and the conduct of noise health effects research.

For both 1981 and 1982, activities were structured to achieve a prompt but orderly phase-out of current program activities by transferring to the State and local programs knowledge and experience EPA has gained. EPA will also transfer noise measurement equipment that will aid States and local governments to assume additional responsibility.

Since the final phase-out of the Noise Control Program is to be completed by the end of 1982, no resources are being requested for this program in 1983.

SUMMARY OF INCREASES AND DECREASES

1982 Noise Program.....

Salaries and Expenses.....

The net decrease reflects the reductions associated with the program by the end of 1982.

Abatement, Control and Compliance.....

The net decrease reflects the program by the end of 1982.

1983 Noise Program.....

SUMMARY OF CHANGES TO JANUARY 1982 BUDGET

January 1982 Estimate.....

January-March.....

Congressional Actions.....

A decrease of \$81,900 to Abatement and Compliance was taken up in the estimate to reflect the reduction. An additional reduction applied to the Salaries and Expenses and Abatement, Control and Compliance appropriations to meet Congressional appropriation levels.

Current 1982 Estimate.....

NOISE

SUMMARY OF INCREASES AND DECREASES

(in thousands of dollars)

1982 Noise Program.....	\$2,010.6
Salaries and Expenses.....	-1,802.1
The net decrease reflects the personnel reductions associated with the phase-out of this program by the end of 1982.	
Abatement, Control and Compliance.....	-208.5
The net decrease reflects the phase-out of this program by the end of 1982.	
1983 Noise Program.....	\$0

SUMMARY OF CHANGES TO JANUARY 1982 BUDGET ESTIMATE

(in thousands of dollars)

January 1982 Estimate.....	\$12,759.3
January-March.....	-70,487.9
Congressional Actions.....	-260.8
A decrease of \$81,900 to Abatement, Control and Compliance was taken against the March estimate to reflect the September 12% reduction. An additional reduction of \$178,900 was applied to the Salaries and Expenses (\$103,900) and Abatement, Control and Compliance (\$75,000) appropriations to meet Congressionally mandated appropriation levels.	
Current 1982 Estimate.....	\$2,010.6

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governments to

be completed
gram in 1983.

NOISE
Environmental Noise Strategies & Standards

	ACTUAL 1981	JANUARY ESTIMATE 1982	MARCH ESTIMATE 1982	CURRENT ESTIMATE 1982	ESTIMATE 1983	INCREASE + DECREASE - 1983 VS 1982
----- (DOLLARS IN THOUSANDS) -----						
PROGRAM						

Noise Standards Development						
Salaries & Expenses	\$939.6	\$954.0	\$954.0	\$571.9		-1571.9
Abatement Control & Compliance	\$1,455.2	\$1,440.0		\$130.2		-1130.2
Noise Control Technology Assessment & Criteria Development						
Salaries & Expenses	\$1,026.8	\$1,164.7	\$951.2	\$1,230.2		-11,230.2
Abatement Control & Compliance	\$2,255.5	\$2,271.5	\$365.4	\$70.3		-170.3
TOTAL:						
Salaries & Expenses	\$1,966.4	\$2,119.5	\$1,906.0	\$1,002.1		-11,802.1
Abatement Control & Compliance	\$3,710.7	\$3,711.5	\$365.4	\$200.5		-1200.5
Environmental Noise Strategies & Standards TOTAL	\$5,677.1	\$5,831.0	\$2,271.4	\$2,010.6		-12,010.6

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NOISE
Environmental Noise Strategies & Standards

	ACTUAL 1981	JANUARY ESTIMATE 1982	MARCH ESTIMATE 1982	CURRENT ESTIMATE 1982	ESTIMATE 1983	INCREASE + DECREASE - 1983 VS 1982

PERMANENT FULL-TIME WORKYEARS						

Noise Standards Development	16.9	13.0	13.0	10.0		-10.0

NOISE
Environmental Noise Strategies & Standards

	ACTUAL 1981	JANUARY ESTIMATE 1982	MARCH ESTIMATE 1982	CURRENT ESTIMATE 1982	ESTIMATE 1983	INCREASE + DECREASE - 1983 VS 1982
<hr/>						
PERMANENT FULL-TIME WORKYEARS						
<hr/>						
Noise Standards Development	16.9	13.0	13.0	10.0		-10.0
Noise Control Technology Assessment & Criteria Development	18.7	20.9	15.4	15.2		-15.2
TOTAL PERMANENT WORKYEARS	35.6	34.7	29.2	25.2		-25.2
TOTAL WORKYEARS						
<hr/>						
Noise Standards Development	21.2	19.6	19.6	11.0		-11.0
Noise Control Technology Assessment & Criteria Development	26.4	30.4	23.3	25.9		-25.9
TOTAL WORKYEARS	47.6	50.0	42.9	37.7		-37.7

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NOISE

Environmental Noise Strategies and Standards

Budget Request

Consistent with the Agency's decision to phase-out the noise control program in 1982, no resources are requested for 1983.

Program Description

This program focuses on the development and promulgation of emission and labeling regulations that will reduce harmful noise emissions from new products. The Agency develops these regulations through the gathering and analysis of data on noise and its health effects to determine exposure and levels of noise reduction required for health and welfare protection and for specific regulatory actions. Evaluations of private and public sector technology development are performed to determine best available technology, and assessments of economic, environmental and health data are made to ascertain the costs and benefits of regulation. This program also includes conduct of a noise health and welfare effects investigation program.

Noise Standards Development -- The objective of noise product regulation is to regulate products which are major contributors to environmental noise exposure.

Under Section 6 and 8 of the Noise Control Act, the Environmental Protection Agency develops and promulgates regulations to control noise from products which are major noise sources through the use of noise emission limitations and/or noise labeling requirements for newly manufactured products. The analysis leading to and supporting these regulations includes the preliminary investigation of potential products for regulation, economic and technological feasibility and the evaluation of health, welfare, and other benefits derived from specific product regulations. Other activities include the preparation of necessary background and supporting material, such as IIS's and economic assessments, for the promulgation of standards.

Noise Control Technology Assessment and Criteria Development -- The objective of this activity is to provide support to EPA for noise product regulation and State and local control efforts through investigations and documentation of noise health effects and availability of noise control technology.

Specific activities include the development of health and welfare criteria, for the assessment of general exposure to noise; the assessment of the environmental, economic, social and health impacts of noise abatement options; and the assessment of advanced and/or future noise control technology including coordination and evaluation of noise research and control conducted by other Federal agencies.

NOISE STANDARDS DEVELOPMENT1981 Accomplishments

In 1981, the Agency obligated \$2,294,800 for this program, of which \$339,600 was for Salaries and Expenses and \$1,955,200 for Abatement, Control, and Compliance. These funds were used for those activities that were necessary to initiate the orderly phase-out of the noise regulatory program. Accomplishments included promulgation of noise emission standards for motorcycles and motorcycle exhaust systems and a technical amendment was proposed to that regulation that would strengthen the compliance testing procedure. The Agency deferred the effective date of the truck regulation for one year from 1982 to 1983. The enforcement of the garbage truck regulation was suspended.

1982 Explanation of Changes from January

January Estimate	March Estimate
------------------	----------------

\$2,394,800	\$394
-------------	-------

The net decrease of -\$1,692,700 is

- January - March, (-\$1,440,000) \$1,440,000 from the January budget and Compliance. This reduction of noise program at the end of 1982.

- Reprogramming, (-\$140,900) a redistribution of expenses and benefits and workyears to support and criteria development program continues. The higher salary cost losses at lower grade levels. The wide support controlled in this program in a letter to Congress on December

Additionally, during the development miscellaneous reprogrammings, will made to this activity and results:

- Congressional Actions, (-\$99,000) against the March estimate re: Abatement, Control and Compliance of the completion of a post trucks.

An additional reduction of -\$3 Expenses (\$42,000) and Abatement, prior to meet Congressionally

1982 Program

In 1982, the Agency is allocating workyears for this program, of which \$130,200 is for extramural purposes on appropriation.

The 1982 activities focus on compliance including taking all the necessary legislation mandated regulation development and regulatory information to States or use, as appropriate, in their regulatory

1983 Program Request

Consistent with the Agency's decision in 1982, no resources are requested for

NOISE CONTROL TECHNOLOGY ASSESSMENT AND1981 Accomplishments

In 1981, the Agency obligated \$3,250,000 for Salaries and Expenses and \$2,000,000 for Compliance. These funds were used for 100 of health effects research studies, test strategies.

1982 Explanation of Changes from January Budget Estimate

January Estimate	March Estimate	Current Estimate
\$2,294,800	\$954,800	\$702,100

The net decrease of -\$1,692,700 results from several actions, as follows:

- January - March. (-\$1,440,000) This change represented a decrease of \$1,440,000 from the January budget, all of which was from Abatement, Control and Compliance. This reduction reflected the decision to discontinue the noise program at the end of 1982.

- Reprogramming. (-\$140,900) This reprogramming of -\$140,900 represents a redistribution of expenses and the transfer of personnel compensation and benefits and workyears to support the noise control technology assessment and criteria development program in 1982 as the noise program phase-out continues. The higher salary cost per workyear results from personnel losses at lower grade levels. The other expense transfers establish office-wide support controlled in this program. (This reprogramming was included in a letter to Congress on December 16, 1981).

Additionally, during the development of the operating plan, several miscellaneous reprogrammings, which are not reportable to Congress, were made to this activity and resulted in a net increase of +\$200,000.

- Congressional Actions. (-\$99,500) A reduction of -\$44,800 was taken against the March estimate reflecting the September 12% reduction to the Abatement, Control and Compliance appropriation resulting in the elimination of the completion of a post regulatory analyses on medium/heavy duty trucks.

An additional reduction of -\$54,700 was applied to the Salaries and Expenses (\$42,000) and Abatement, Control and Compliance (\$25,000) appropriations to meet Congressionally mandated appropriation levels.

1982 Program

In 1982, the Agency is allocating a total of \$702,100 and 10.0 permanent workyears for this program, of which \$571,900 is for Salaries and Expenses and \$130,200 is for extramural purposes under the Abatement, Control and Compliance appropriation.

The 1982 activities focus on completion of all regulatory phase-out actions, including taking all the necessary legal steps to effect the steps to terminate all mandated regulation development activities. The documentation and transfer of regulatory information to States and localities will be completed for their use, as appropriate, in their regulatory program development activities.

1983 Program Request

Consistent with the Agency's decision to phase-out the noise control program in 1982, no resources are requested for 1983.

NOISE CONTROL TECHNOLOGY ASSESSMENT AND CRITERIA DEVELOPMENT1981 Accomplishments

In 1981, the Agency obligated \$3,282,300 for this program, of which \$1,026,800 was for Salaries and Expenses and \$2,255,500 for Abatement, Control, and Compliance. These funds were used for initiation of phase-out efforts in the areas of health effects research studies, technology demonstrations, and noise abatement strategies.

The 1981 accomplishments included an annual report on the University of Miami private study (the initial findings of increased blood pressure attributable to noise were again replicated). In addition, the Agency finalized reports on the epidemiological feasibility study and psychoacoustic study of engine brake noise. The prospective epidemiological feasibility study sets forth specific recommendations for future epidemiological studies. The results from the psychoacoustic study of engine brake noise supports the regulation of this source of noise.

During 1981, EPA completed the Quiet Engine and Quiet Tire research projects. In addition, the Agency cancelled the Quiet House program and eliminated part of the Quiet Truck program. A significant accomplishment in the Quiet Truck Program was the quieting of the third (of four) heavy duty trucks to approximately 72 dBA. The construction site demonstration and a cooling system technology assessment were completed. The remaining three interagency agreement demonstrations were completed: Shipyard Machinery Noise (Navy), Electric Generating Plant (TVA), and Quiet Propeller (NASA).

1982 Explanation of Changes from January Budget Estimate

January Estimate	March Estimate	Current Estimate
\$3,426,000	\$1,316,000	\$1,308,500

The net decrease of -\$2,127,700 results from several actions, as follows:

- **January - March. (-\$2,119,600)** This change represented a decrease of \$2,119,600 from the January budget, of which \$213,500 was for Salaries and Expenses and \$1,906,100 was for Abatement, Control and Compliance. These reductions reflected the decision to discontinue the noise program by the end of 1982.

- **Reprogramming. (+\$140,900)** This reprogramming of +\$140,900 represents a redistribution of expenses and the transfer of personnel compensation and benefits and workyears to support the noise control technology assessment and criteria development program in 1982 as the noise program phase-out continues. The higher salary cost per workyear results from personnel losses at lower grade levels. The other expense transfers establish office-wide support controlled in this program. (This reprogramming was included in a letter to Congress on December 16, 1981).

Additionally, during the development of the operating plan, several miscellaneous reprogrammings, which are not reportable to Congress, were made to this activity and resulted in a net decrease of -\$200,000.

- **Congressional Actions. (-\$149,000)** A reduction of -\$137,100 was taken against the March estimate reflecting the September 12% reduction to the Abatement, Control and Compliance appropriation. This action will result in the elimination of aviation modelling which provides documentation of a two-year aviation study.

An additional reduction of -\$111,900 was applied to the Salaries and Expenses (\$31,900) and Abatement, Control and Compliance (\$80,000) appropriations to meet Congressionally mandated appropriation levels.

1982 Program

In 1982, the Agency is allocating a total of \$1,308,500 and 15.2 permanent workyears for this program, of which \$1,230,200 is for Salaries and Expenses and \$78,300 is for extramural purposes under the Abatement, Control and Compliance appropriation.

During 1982, the program is concentrating on activities begun in 1981. The final reports for 21 research projects are to be made available not only to other Federal, State, and local government control efforts.

All technology research projects reports and/or summary information are States and localities. The results of techniques and technologies for abating to all interested parties, including Federal, State, and local government control efforts.

1982 Program Request

Consistent with the Agency's decision in 1982, no resources are requested for

the University of
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Quiet Truck Program
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technology assess-
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and Compliance

During 1982, the program is concentrating on the completion of all remaining phase out activities begun in 1981. This includes the completion and dissemination of the final reports for 21 research projects. The results of these projects are to be made available not only to the scientific community, but also to other Federal, State, and local governments for incorporation into their noise control efforts.

All technology research projects are also being brought to completion. Reports and/or summary information are to be prepared for transfer and use by States and localities. The results of interagency demonstrations to determine techniques and technologies for abating noise are also to be packaged for transfer to all interested parties, including Federal and State Agencies.

1983 Program Request

Consistent with the Agency's decision to phase-out the noise control program in 1982, no resources are requested for 1983.

NOISE
Noise Program Strategies & Implementation

	ACTUAL 1981	JANUARY ESTIMATE 1982	MARCH ESTIMATE 1982	CURRENT ESTIMATE 1982	ESTIMATE 1983	INCREASE / DECREASE - 1983 VS 1982
(DOLLARS IN THOUSANDS)						
PROGRAM						

Noise Control Implementation & Evaluation						
Salaries & Expenses	\$774.0	\$853.5				
Abatement Control & Compliance	\$3,349.2	\$3,056.1				
Federal Agency Coordination						
Salaries & Expenses	\$320.1	\$351.7				
Abatement Control & Compliance	\$346.1	\$294.3				
Noise Regional Implementation						
Salaries & Expenses	\$652.9	\$853.7				
Abatement Control & Compliance	\$24.9	\$192.2				
TOTAL:						
Salaries & Expenses	\$1,755.0	\$2,050.9				
Abatement Control & Compliance	\$3,720.2	\$3,542.6				
Noise Program Strategies & Implementation	TOTAL	\$5,475.2	\$5,601.5			

NOISE
Noise Program Strategies & Implementation

	ACTUAL 1981	JANUARY ESTIMATE 1982	MARCH ESTIMATE 1982	CURRENT ESTIMATE 1982	ESTIMATE 1983	INCREASE / DECREASE - 1983 VS 1982

PERMANENT FULL-TIME WORKYEARS						

Noise Control Implementation & Evaluation	14.4	17.1				
Federal Agency Coordination	6.5	6.0				

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Salaries & Expenses		\$1,755.0	\$2,050.9
Abatement Control & Compliance		\$1,720.2	\$3,542.6
Noise Program Strategies & Implementation	TOTAL	\$5,475.2	\$5,601.5

NOISE
Noise Program Strategies & Implementation

	ACTUAL 1981	JANUARY ESTIMATE 1982	MARCH ESTIMATE 1982	CURRENT ESTIMATE 1982	ESTIMATE INCREASE 1983 IN CH ASL - 1981 VS 1982
PERMANENT FULL-TIME WORKYEARS					
Noise Control Implementation & Evaluation	14.4	17.1			
Federal Agency Coordination-Noise	6.5	6.0			
Noise Regional Implementation	13.4	16.5			
TOTAL PERMANENT WORKYEARS	34.3	39.6			
TOTAL WORKYEARS					
Noise Control Implementation & Evaluation	22.3	24.1			
Federal Agency Coordination-Noise	7.3	7.0			
Noise Regional Implementation	22.6	26.7			
TOTAL WORKYEARS	52.2	57.6			

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NOISE

Noise Program Strategies and Implementation

Budget Request

Consistent with the Agency's decision to phase-out the noise control program in 1982, no resources are requested for 1983.

Program Description

This program provides assistance to States and localities in the development and implementation of noise control programs. Effective State and local noise control programs are useful in reducing noise to levels commensurate with the protection of public health and welfare. In recognition of this need, the Noise Control Act, as amended by the Quiet Communities Act, calls for EPA to assist State and local governments in the development of noise control programs. The objective of EPA's program is to substantially increase the number of communities having effective noise control programs with special emphasis on lessening the impact of noise from motor vehicles (motorcycles, trucks, autos). Assistance is also provided in the areas of stationary source control (property line standards), construction site noise control, noise abatement planning (zoning, land use planning, airport planning), and public education.

This program also includes the review of the implementation of regulatory requirements for which the Federal Government has primary responsibility; the control of noise emissions at Federal facilities, and review of EIS's for noise implications, and the overall coordination of all Federal programs for noise abatement and control. The objective of this program is to bring the major noise authorities of other Federal agencies to bear on the noise problem in a total national effort. Included are such agencies as the Federal Highway Administration, the Federal Aviation Administration, the Urban Mass Transit Administration, the Department of Housing and Urban Development, and the Department of Defense.

Noise Control Implementation and Evaluation -- Under the Noise Control Act, as amended by the Quiet Communities Act of 1978, the Environmental Protection Agency delivers assistance to States and localities in order to encourage the development of effective noise control. Active State and local in-use noise control programs are needed to form an efficient national network that will serve to regulate non-local sources of noise.

This program provides limited financial assistance through cooperative agreements to State and localities and the design and administration of technical assistance programs for State and local use. Special emphasis is placed on helping States initiate programs to assist local communities start noise control programs and to strengthen existing local programs. Other EPA assistance includes the Each Community Helps Other (ECHO) program (use of local noise control experts (volunteers) to help other communities), development of State and local program "tools", e.g., model laws and codes, administration of the noise control demonstration and assistance program, and Technical Assistance Centers located at ten universities.

Federal Agency Coordination -- The activities of this program are directed toward assuring that Federal government responsibilities for noise control are met. Such activities include assisting other Federal agencies to consider and include, where appropriate, noise abatement and control practices in their programs and comply with Federal, State, interstate, and local requirements; coordinating noise control programs carried out by Federal agencies; monitoring the progress of other Federal facilities' noise abatement activities; and reviewing Federal environmental impact statements insofar as their noise impacts are concerned.

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Noise Regional Implementation -- for EPA interaction with State and local development of State and local abatement activities. As such, they States and localities and oversee the Technical Assistance Centers

NOISE CONTROL IMPLEMENTATION AND EVALUATION1981 Accomplishments

In 1981, the Agency obligated \$4.1 million for salaries and expenses and \$3.1 million for the development of State and local abatement activities. These funds were used for the phase out of the State and local assistance was provided to 22 State programs (through the end of 1982) in or the noise program as a continuous activity about: (1) an increase in the number to 24 in 1981, and (2) an increase in 1977 to over 300 in 1981. Additionally, gradually phased out during 1981 with support to all operating State programs, met specifications of two products. I have committed in writing to participate

1982 Explanation of Changes from January

January Estimate	March Estimate
\$3,909,600	...

The net decrease of -\$3,909,600 results

- January - March, (-\$3,909,600)
 \$3,909,600 from the January Budget
 Expenses and \$3,058,100 was for the
 reductions reflected the decision
 and of 1982. All resources for the
 Environmental Noise Strategies and

1982 Program

No resources were requested for the phase-out activities are being accomplished. Noise Strategies and Standards subject activities in the State and local area programs to assume complete responsibility to continue an extensive "Each Community, located in States without noise building and noise abatement efforts. Program into the government purchasing and arrange for the transfer of all in State governments for use in ongoing and

1983 Program Request

Consistent with the Agency's decision in 1982, no resources are requested for

Noise Control Implementation -- Regional offices provide the focal point for EPA interaction with State and local governments, and Federal assistance in the development of State and local government capabilities to implement noise abatement activities. As such, they provide technical-financial support to States and localities and oversee the operation of the several University-based Technical Assistance Centers.

NOISE CONTROL IMPLEMENTATION AND EVALUATION

1981 Accomplishments

In 1981, the Agency obligated \$4,123,200 for this program, of which \$774,000 was for Salaries and Expenses and \$3,349,200 for Abatement, Control, and Compliance. These funds were used for those activities necessary for the orderly phase out of the State and local assistance programs. During 1981, financial assistance was provided to 22 State programs, which included an additional year's funding (through the end of 1982) in order to prepare the States for sustaining the noise program as a continuous activity. This program has assisted in bringing about: (1) an increase in the number of active State programs from 9 in 1979 to 24 in 1981, and (2) an increase in number of active local programs from 90 in 1977 to over 300 in 1981. Additionally, the Technical Assistance Centers were gradually phased out during 1981 with two being funded through 1982 to provide support to all operating State programs. The Buy Quiet program produced procurement specifications on two products. Over 70 governments and major utilities have committed in writing to participate in the program.

1982 Explanation of Changes from January Budget Estimate

<u>January Estimate</u>	<u>March Estimate</u>	<u>Current Estimate</u>
\$1,909,600

The net decrease of -\$3,909,600 results from the following action:

- January - March, (-\$3,909,600) This change represented a decrease of \$3,909,600 from the January budget, of which \$833,500 was for Salaries and Expenses and \$3,036,100 was for Abatement, Control and Compliance. These reductions reflected the decision to discontinue the noise program by the end of 1982. All resources for the orderly phase-out are included in the Environmental Noise Strategies and Standards subactivity.

1982 Program

No resources were requested for this program area in 1982. All remaining phase-out activities are being accomplished with resources in the Environmental Noise Strategies and Standards subactivity. In 1982, there will be ongoing activities in the State and local areas to strengthen State and local noise control programs to assume complete responsibilities for environmental noise problems; to continue an extensive "Each Community Help Others" (ECHO) program to assist cities, located in States without noise control programs, with their capacity building and noise abatement efforts; institutionalization of the Buy Quiet Program into the government purchasing process throughout the United States and arrange for the transfer of all noise control equipment and documents to State governments for use in ongoing abatement programs.

1983 Program Request

Consistent with the Agency's decision to phase-out the noise control program in 1982, no resources are requested for 1983.

FEDERAL AGENCY COORDINATION1981 Accomplishments

In 1981, the Agency obligated \$674,200 for this program, of which \$328,100 was for Salaries and Expenses and \$346,100 was for Abatement, Control, and Compliance. These funds were used to support interagency agreements with other Federal agencies for the purpose of carrying out noise control demonstrations and test techniques and to incorporate the results into the appropriate programs of Federal agencies, including EPA. During 1981, most on-going technology demonstrations were completed, and results made available to interested groups including other Federal and State agencies. Aviation studies underway were continued.

1982 Explanation of Changes from January Budget Estimate

<u>January Estimate</u>	<u>March Estimate</u>	<u>Current Estimate</u>
\$646,000

The net decrease of -\$646,000 results from the following action:

- January - March, (-\$646,000) This change represented a decrease of \$646,000 from the January budget, of which \$381,700 was for Salaries and Expenses and \$264,300 was for Abatement, Control and Compliance. These decreases reflected the decision to discontinue the noise program by the end of 1982. All resources for the orderly phase-out are included in the Environmental Noise Strategies and Standards subactivity.

1982 Program

No resources were requested in 1982 for this program. All remaining phase-out efforts are being accomplished with resources in the Environmental Noise Strategies and Standards subactivity. This work includes the completion of all projects and the transfer of appropriate information to Federal and State and local agencies. Studies which provide technical assistance for reducing noise at airports are being completed and distributed to airport operators and State and local governments.

1983 Program Request

Consistent with the Agency's decision to phase out the noise control program in 1982, no resources are requested for 1983.

NOISE REGIONAL IMPLEMENTATION1981 Accomplishments

In 1981, the Agency obligated \$677,800 for this program, of which \$652,900 was for Salaries and Expenses and \$24,900 for Abatement, Control, and Compliance. During 1981, the Regional program provided for those activities that were necessary for the phase-out of the Region's State and local technical assistance program.

1982 Explanation of Changes from January Budget Estimate

<u>January Estimate</u>	<u>March Estimate</u>	<u>Current Estimate</u>
\$1,045,900

The net decrease of -\$1,045,900 results from the following action:

- January - March, (-\$1,045,900)

\$1,045,900 from the January budget. Expenses and \$192,200 was for reductions reflected the decision end of 1982.

1982 Program

No resources were requested for 1982 of phase-out are being handled by the Agency. All remaining phase-out efforts are being accomplished with resources in the Environmental Noise Strategies and Standards subactivity. This work includes the completion of all projects and the transfer of appropriate information to Federal and State and local agencies. Studies which provide technical assistance for reducing noise at airports are being completed and distributed to airport operators and State and local governments.

1983 Program Request

Consistent with the Agency's decision in 1982, no resources are requested for 1983.

- January - March. (-\$1,045,900) This change represented a decrease of \$1,045,900 from the January budget, of which \$852,700 was for Salaries and Expenses and \$192,900 was for Abatement, Control and Compliance. These reductions reflected the decision to discontinue the noise program by the end of 1982.

1982 Program

No resources were requested for this program in 1982. All remaining aspects of phase-out are being handled by the EPA headquarters noise control program, and accomplished with resources in the Environmental Noise Strategies and Standards subactivity. The work effort includes oversight of all remaining State Cooperative Agreements and the phase-out of the Regions' State and Local technical assistance programs.

1983 Program Request

Consistent with the Agency's decision to phase-out the noise control program in 1982, no resources are requested for 1983.

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NOISE
Noise Enforcement

ACTUAL 1981 JANUARY ESTIMATE 1982 MARCH ESTIMATE 1982 CURRENT ESTIMATE 1982 ESTIMATE 1983 INCREASE + DECREASE - 1983 VS 1982

(DOLLARS IN THOUSANDS)

PROGRAM

Noise Enforcement Salaries & Expenses	\$951.1	\$1,101.0			
Abatement Control & Compliance	\$103.7	\$225.0			
TOTAL:					
Salaries & Expenses	\$951.1				
Abatement Control & Compliance	\$103.7				
Noise Enforcement TOTAL	\$1,054.8	\$1,326.0			

PERMANENT FULL-TIME WORKYEARS

Noise Enforcement	19.4	19.2			
TOTAL PERMANENT WORKYEARS	19.4	19.2			

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NOISE
Noise Enforcement

ACTUAL 1981 JANUARY ESTIMATE 1982 MARCH ESTIMATE 1982 CURRENT ESTIMATE 1982 ESTIMATE 1983 INCREASE + DECREASE - 1983 VS 1982

TOTAL WORKYEARS

Noise Enforcement	28.5	35.3			
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noise enforcement	19.4	19.2
TOTAL PERMANENT WORKYEARS	19.4	19.2

NOISE

Noise Enforcement

ACTUAL 1981	JANUARY ESTIMATE 1982	MARCH ESTIMATE 1982	CURRENT ESTIMATE 1982	ESTIMATE 1983	INCREASE / DECREASE - 1983 VS 1982
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TOTAL WORKYEARS

Noise Enforcement	20.5	35.3
TOTAL WORKYEARS	20.5	35.3

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NOISE
Noise Enforcement

Budget Request

The Agency requests no funds and no permanent workyears for 1983.

Program Description

The long-range goals and major objectives of the noise enforcement program have been to assure that regulated products distributed in commerce comply with Sections 6 and 8 (new product noise emission standards and information labeling requirements respectively) of the Noise Control Act of 1972. Additionally, assistance has been given to State and local governments in the development of effective noise enforcement programs to address compliance of regulated products in use.

NOISE ENFORCEMENT

1981 Accomplishments

In 1981, the Agency obligated a total \$1,054,800 for this program of which \$951,100 was for the Salaries and Expenses appropriation and \$103,700 was for extramural purposes under the Abatement, Control and Compliance appropriation. Extramural funds were used to support the State and local noise enforcement effort (especially for anti-tampering and in-use noise control requirements which supplement Federal product regulations); to evaluate and summarize production verification reports; and to provide for engineering and technical support services.

1982 Explanation of Changes from January Budget Estimate

January Estimate	March Estimate	Current Estimate
\$1,326,000

The net decrease of -\$1,326,000 results from the following action:

+ January - March, (-\$1,326,000) This change represented a decrease of \$1,326,000 from the January budget, of which \$1,101,000 was for Salaries and Expenses and \$225,000 was for Abatement, Control and Compliance. This decrease represented a phase-out of Federal noise enforcement activities and a shift in emphasis to State and local noise enforcement programs.

1982 Program

No resources were requested in 1982, consistent with the shift in Agency policy towards a primary state and local government role in reducing levels of environmental noise.

1983 Program Request

No resources are requested for this program in 1983.

INTERDISCIPLINARY				ESTIMATE INCREASE + DECREASE - 1983 VS 1982
ACTUAL 1981	JANUARY ESTIMATE 1982	MARCH ESTIMATE 1982	CURRENT ESTIMATE 1982	
\$9,392.0	\$6,765.6	\$10,092.2	\$9,791.3	\$15,437.6
\$1,406.2	\$6,731.7	\$4,654.3	\$4,216.5	\$2,709.8
\$7,985.8	\$1,033.9	\$5,437.9	\$5,574.8	-\$1,119.4
				(DOLLARS IN THOUSANDS)
				APPROPRIATION
				Salaries & Expenses
				Abatement Control & Compliance

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DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT—INDEPENDENT AGENCIES
APPROPRIATIONS FOR 1984

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES
NINETY-EIGHTH CONGRESS
FIRST SESSION

SUBCOMMITTEE ON HUD—INDEPENDENT AGENCIES

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BOB TRAXLER, Michigan

BILL GREEN, New York

LOUIS STOKES, Ohio

LAWRENCE COUGHLIN, Pennsylvania

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JERRY LEWIS, California

MARTIN OLAV SABO, Minnesota

BILL BONER, Tennessee

RICHARD N. MALOW, and PAUL E. THOMSON, *Staff Assistants*

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WASHINGTON : 1983

ENVIRONMENTAL PROTECTION AGENCY
 Summary of Budget Authority
 Obligations, Outlays, and Workyears
 by Media
 (dollars in thousands)

Estimate
 1984

20,000.0
 23.0
 22.0

310,000.0
 319,870.0
 269,000.0
 619.3
 707.1

)) (44,000.0)
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83,658,591.0
 3,492,299.0
 4,101,504.0
 8,669.1
 10,447.8

	Actual 1982	Budget Estimate 1983	Current Estimate 1983	Estimate 1984
Air				
Budget Authority.....	221,548.5	218,053.3	222,245.3	190,991.6
Obligations.....	229,703.1	188,611.0	214,902.3	191,337.6
Outlays.....	245,682.0	218,492.5	195,763.0	199,821.0
Permanent Workyears.....	1,578.0	1,333.2	1,374.4	1,350.3
Total Workyears.....	1,821.8	1,549.4	1,603.2	1,577.1
Water Quality				
Budget Authority.....	234,720.4	185,965.7	215,996.9	151,369.3
Obligations.....	250,946.2	192,294.0	219,136.9	181,813.3
Outlays.....	314,122.0	212,285.5	255,108.0	205,682.0
Permanent Workyears.....	2,271.9	1,849.5	1,950.8	1,662.9
Total Workyears.....	2,671.1	2,292.0	2,379.3	2,065.5
Drinking Water				
Budget Authority.....	92,281.7	69,750.1	77,958.5	66,255.9
Obligations.....	85,898.7	71,783.0	78,020.5	66,467.9
Outlays.....	80,715.0	81,882.7	76,760.0	73,568.0
Permanent Workyears.....	474.3	455.5	471.2	465.1
Total Workyears.....	565.4	550.8	562.4	560.8
Hazardous Waste				
Budget Authority.....	106,777.7	103,343.7	116,551.5	110,112.7
Obligations.....	110,578.4	105,408.0	117,244.5	110,194.7
Outlays.....	123,314.0	124,857.6	115,722.0	114,192.0
Permanent Workyears.....	586.1	557.0	643.1	625.8
Total Workyears.....	737.9	740.1	821.9	830.0
Pesticides				
Budget Authority.....	54,082.0	50,782.0	52,928.1	52,742.6
Obligations.....	57,813.6	52,271.0	52,978.1	52,750.6
Outlays.....	61,435.0	57,244.4	53,074.0	53,430.0
Permanent Workyears.....	765.3	680.9	682.2	652.7
Total Workyears.....	828.3	744.5	745.8	726.9
Radiation				
Budget Authority.....	10,663.3	10,351.1	10,923.3	10,854.8
Obligations.....	12,335.4	10,388.0	11,059.3	10,872.8
Outlays.....	12,349.0	11,147.0	12,483.0	11,419.0
Permanent Workyears.....	150.3	135.1	148.1	126.9
Total Workyears.....	169.6	159.9	172.2	146.4
Noise				
Budget Authority.....	1,922.6	...	...	...
Obligations.....	1,621.3	40.0	...	...
Outlays.....	6,616.0	350.0	1,707.0	663.0
Permanent Workyears.....	21.2	...	...	...
Total Workyears.....	27.4	...	...	...
Interdisciplinary				
Budget Authority.....	18,850.0	20,738.1	23,935.9	41,335.6
Obligations.....	16,928.9	20,665.0	25,606.9	41,595.6
Outlays.....	14,425.0	22,853.0	22,979.0	29,098.0
Permanent Workyears.....	200.2	310.3	321.6	353.4
Total Workyears.....	243.9	363.7	388.8	396.5

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ENVIRONMENTAL PROTECTION AGENCY

1984 Budget Estimate

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ACTUAL
1982

(DOLLAR)

<u>NOISE</u>	<u>Page</u>	<u>APPROPRIATION</u>	
	N-1		
<u>ABATEMENT & CONTROL</u>			
Environmental Noise Strategies & Standards.....	N-7	Salaries & Expenses	\$1,280.0
Noise Standards Development.....	N-7	Abatement Control & Compliance	\$341.0
Noise Control Technology Assessment & Criteria Development.....	N-7	TOTAL, Noise	\$1,621.0
Noise Program Implementation.....	N-8		
		PERMANENT WORKYEARS	21.0
		TOTAL WORKYEARS	27.0
		OUTLAYS	\$8,816.0
		AUTHORIZATION LEVELS	

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NOISE

ACTUAL 1982	BUDGET ESTIMATE 1983	CURRENT ESTIMATE 1983	ESTIMATE 1984	INCREASE + DECREASE - 1984 VS 1983
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(DOLLARS IN THOUSANDS)

Page

N-1

..... N-7
..... N-7
INT..... N-7
..... N-8

APPROPRIATION

Salaries & Expenses	\$1,280.3			
Abatement Control & Compliance	\$341.0			
TOTAL, Noise	\$1,621.3			
PERMANENT WORKYEARS	21.2			
TOTAL WORKYEARS	27.4			
OUTLAYS	\$6,616.0	\$350.0	\$1,707.0	\$663.0 - \$1,044.0
AUTHORIZATION LEVELS				

OVERVIEW AND STRATEGY

The 1982 noise control budget represented a major policy change with respect to the Federal effort to reduce noise exposure. As reflected in that budget request, the EPA noise control program has been phased-out. This decision resulted from a determination that the benefits of noise control are highly localized and that the function of noise control can be adequately carried out at the State and local level without the presence of a Federal program.

States and localities have shown a significant increase in their ability and desire to develop their own noise control programs. During the last decade, over 1,300 municipalities and 24 States have enacted noise control legislation. Of these, 20 States have viable active programs and over 300 local communities have ongoing noise control programs with active enforcement. This dramatic growth (233% in the past five years) convincingly demonstrates that State and local governments can and will deal with environmental noise problems within their jurisdictions.

The major components of EPA's noise control effort were promulgation and enforcement of Federal noise regulations, strengthening the capabilities of State and local noise control agencies by providing technical and financial assistance, and the conduct of noise health effects research.

For 1982, activities were structured to achieve a prompt but orderly phase-out of current program activities by transferring to the State and local programs knowledge and experience EPA has gained. This included the transfer of noise measurement equipment that will aid States and local governments as they assume additional responsibility, and the training of approximately 800 State and local personnel in noise control techniques.

Since most final phase-out activities of the Noise Control Program were nearing completion at the end of 1982, no resources were requested for this program in 1983, and no resources are requested for 1984.

Environmental

ACTUAL
1982-----
(DOLLAR)

PROGRAM

Noise Standards Development		
Salaries & Expenses		\$437.0
Abatement Control & Compliance		\$163.0
TOTAL		\$600.0
Noise Control Technology Assessment & Criteria Development		
Salaries & Expenses		\$842.0
Abatement Control & Compliance		\$149.0
TOTAL		\$992.0
TOTAL:		
Salaries & Expenses		\$1,280.0
Abatement Control & Compliance		\$312.0
Environmental Noise Strategies & Standards	TOTAL	\$1,592.0

PERMANENT WORKYEARS

Noise Standards Development	8.2
Noise Control Technology Assessment & Criteria Development	13.0
TOTAL PERMANENT WORKYEARS	21.2
TOTAL WORKYEARS	
Noise Standards Development	9.8
Noise Control Technology Assessment & Criteria Development	17.0
TOTAL WORKYEARS	27.0

NOISE

Environmental Noise Strategies & Standards

ACTUAL	BUDGET	CURRENT	ESTIMATE	INCREASE -
1982	ESTIMATE	ESTIMATE	1984	DECREASE -
	1983	1983		1984 VS 1983

(DOLLARS IN THOUSANDS)

PROGRAM

Noise Standards Development	
Salaries & Expenses	\$437.0
Abatement Control & Compliance	\$163.3
TOTAL	\$600.3
Noise Control Technology Assessment & Criteria Development	
Salaries & Expenses	\$843.3
Abatement Control & Compliance	\$149.3
TOTAL	\$992.6
TOTAL:	
Salaries & Expenses	\$1,280.3
Abatement Control & Compliance	\$312.6
TOTAL	\$1,592.9
Environmental Noise Strategies & Standards	

PERMANENT WORKYEARS

Noise Standards Development	
	8.2
Noise Control Technology Assessment & Criteria Development	
	13.0
TOTAL PERMANENT WORKYEARS	21.2
TOTAL WORKYEARS	
Noise Standards Development	
	9.5
Noise Control Technology Assessment & Criteria Development	
	17.9
TOTAL WORKYEARS	27.4

change with respect to that budget re- decision resulted inly localized and at the State and

their ability and last decade, over legislation. Of communities have dramatic growth State and local ens within their

promulgation and abilities of State (ncial) assistance,

orderly phase-out d local programs transfer of noise is as they assume State and local

program were near- or this program in

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NOISE

ENVIRONMENTAL

Noise Program Implementation

1984 E.

Table

ACTUAL 1982	BUDGET ESTIMATE 1983	CURRENT ESTIMATE 1983	ESTIMATE 1984	INCREASE + DECREASE - 1984 VS 1983
----------------	----------------------------	-----------------------------	------------------	--

(DOLLARS IN THOUSANDS)

PROGRAM

Noise Control Implementation & Evaluation				
Abatement Control & Compliance		\$28.4		
TOTAL:			\$28.4	
Abatement Control & Compliance			\$28.4	
Noise Program Implementation	TOTAL		\$28.4	

NOISE

ABATEMENT & CONTROL
 Environmental Noise Strategies
 Noise Standards Development
 Noise Control Technology Act
 Noise Program Implementation...

ENVIRONMENTAL PROTECTION AGENCY

1984 Budget Estimate

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INCREASE +
DECREASE -
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Noise Standards Development.....	N-7
Noise Control Technology Assessment & Criteria Development.....	N-7
Noise Program Implementation.....	N-8

NOISE

Environmental Noise Strategies and Standards

Budget Request

Consistent with the Agency's decision to phase-out the Noise Program in 1982, no resources are requested for 1984.

Program Description

This program has been phased-out.

NOISE STANDARDS DEVELOPMENT1984 Program Request

No resources are requested for this program in 1984.

1983 Program

No resources were requested for this program in 1983.

1982 Accomplishments

In 1982, the Agency obligated \$600,300 for this program, of which \$437,000 was for Salaries and Expenses and \$163,300 was for Abatement, Control and Compliance. The program focused on regulatory phase-out operations, including the clearing of an incomplete regulatory agenda. Noise studies and more than a half-million publications were sent to States and localities for their use. Also, fifty-six on-site visits were made to State and local governments to provide technical assistance in strengthening their noise control programs.

NOISE CONTROL TECHNOLOGY ASSESSMENT AND CRITERIA DEVELOPMENT1984 Program Request

No resources are requested for this program in 1984.

1983 Program

No resources were requested for this program in 1983.

1982 Accomplishments

In 1982, the Agency obligated \$992,600 for this program, of which \$843,300 was for Salaries and Expenses and \$149,300 was for Abatement, Control and Compliance. During 1982, the Agency concentrated on the completion of phase-out activities. Health effects research studies as well as technology research projects were either completed or transferred to other agencies for continuation. The results of final studies were made available to the scientific community and also to other Federal, State, and local governments for incorporation in their noise control efforts.

Noise Prog

Budget Request

Consistent with the Agency's decision, no resources are requested for 1984.

Program Description

This program has been phased-out.

NOISE CONTROL IMPLEMENTATION AND EVALUATION1984 Program Request

No resources are requested for this program in 1984.

1983 Program

No resources were requested for this program in 1983.

1982 Accomplishments

In 1982, the Agency obligated \$2,000,000 for this program, of which \$1,500,000 was for Abatement, Control and Compliance. The program focused on regulatory phase-out operations, including the clearing of an incomplete regulatory agenda. Noise studies and more than a half-million publications were sent to States and localities for their use. Also, fifty-six on-site visits were made to State and local governments to provide technical assistance in strengthening their noise control programs.

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NOISE

Noise Program Implementation

Budget Request

Consistent with the Agency's decision to phase-out the Noise Program in 1982, no resources are requested for 1984.

Program Description

This program has been phased-out.

NOISE CONTROL IMPLEMENTATION AND EVALUATION

1984 Program Request

No resources are requested for this program in 1984.

1983 Program

No resources were requested for this program in 1983.

1982 Accomplishments

In 1982, the Agency obligated \$25,400 for this program, all of which was for Abatement, Control and Compliance. Contract funds supported completion of the phase-out of the Noise Program.

of which \$437,000
Control and Compli-
including the clear-
re than a half-million
was. Also, fifty-six
to provide technical

of which \$843,300 was
ntrol and Compliance.
phase-out activities.
projects were either
The results of final
iso to other Federal,
ise control efforts.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
AND CERTAIN INDEPENDENT AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1983

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 6956

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND FOR SUNDRY INDEPENDENT AGENCIES, BOARDS, COMMISSIONS, CORPORATIONS, AND OFFICES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1983, AND FOR OTHER PURPOSES

PART 1--(Pages 1-922)

AMERICAN BATTLE MONUMENTS COMMISSION
CONSUMER PRODUCT SAFETY COMMISSION
COUNCIL ON ENVIRONMENTAL QUALITY
ARMY CEMETERY EXPENSES
OFFICE OF CONSUMER AFFAIRS
DEPARTMENT OF THE TREASURY
OFFICE OF REVENUE SHARING
ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF SCIENCE TECHNOLOGY POLICY
FEDERAL EMERGENCY MANAGEMENT AGENCY
GENERAL ACCOUNTING OFFICE
CONSUMER INFORMATION CENTER
OFFICE OF TECHNOLOGY ASSESSMENT
SELECTIVE SERVICE SYSTEM
VETERANS ADMINISTRATION

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE

14-067 O

WASHINGTON : 1983

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Answer: In fiscal year 1982 we have allocated a total of 10.5 workyears and no extramural dollars. In fiscal year 1983 the budget estimate is 9.9 workyears and \$400,000 in contract funds.

Question: Will this work be done in-house or by contract?

Answer: This is primarily an in-house effort which will be augmented by some contractor support.

Question: Will a "Third Party" such as the National Academy of Sciences be asked to review your findings?

Answer: We have no specific plans to request the aid of the National Academy of Sciences. Ample provision is being made to allow for public comment and review as we progress through the permit process.

NOISE PROGRAM

Question: In fiscal year 1983, you are not requesting any funds for the Noise Program. Last year as part of the March Budget amendment, the Administration announced its intention to phase the program out during 1982. A total of \$2,010,600 is available in 1982.

Do you foresee problems in the Noise area in future years without an organized Federal presence--in particular the development of conflicting State regulations with which industry will have to comply?

Answer: Problems in the noise area in the future will be minimal without an organized Federal presence. The Federal government only recently began to regulate noise. Historically, State and local governments have been involved in noise control long before a Federal presence.

We will provide training to over 500 State and local noise control officials this year, and provide on a long-term basis approximately 1.5 million dollars worth of noise measuring equipment to State governments for community equipment loan programs.

We feel that the States can assume full responsibility for environmental noise problems.

We do not anticipate any problems with the development of conflicting State regulations with which industry will have to comply. At the present time only 8 or 10 States have the regulatory authority to set new product noise standards. Of these, only 3 or 4 would have the resources and technical expertise to develop such standards (California, Oregon, and Delaware).

For the most part States would prefer to adopt in-use standards rather than new product standards governing noise emitted while the product is being operated. These types of controls are quite uniform throughout the Nation.

Finally, it is very difficult for States and communities to enforce emission limits on new products which are more stringent than those of surrounding jurisdiction since purchasers can cross jurisdictional lines to purchase products.

Question: Does Federal noise law still have pre-emption on State law even though there is no longer a Federal Noise Program after 1982?

Answer: Yes, in the areas of medium and heavy-duty trucks, motorcycles, air compressors, interstate motor and rail carriers, and garbage trucks under the existing legislation. However, the Senate has passed a Bill that would leave in place EPA's only medium and heavy-duty trucks and the interstate carriers regulations. The House, likewise, has passed a bill that would leave in place EPA's medium and heavy-duty trucks, interstate carriers, motorcycles, and air compressor regulations. These would be preemptive regulations.

We are now considering, however, a self-certification procedure for the respective industries to comply with these regulations. We are also reconsidering the need for the garbage truck regulation in view of the increased capacity of State and local governments to deal with this source of noise. We do not foresee that these preemptive regulations would inhibit the abatement and control of noise at the State and local level inasmuch as State and local governments can adopt complementary legislation to enforce them.

OMB ENFORCEMENT REQUESTS

Question: Please provide, for the record, a list containing your initial request to OMB and the amount now contained in your budget for each of your enforcement programs.

Answer: This information follows:

Name	1983 FFY
Stationary Source Air	280.
Mobile Source Air	65.
Water Quality Enforcement	329.
Water Permit Enforcement	163.
Drinking Water Enforcement	25.
Hazardous Waste Enforcement	46.
Pesticides Enforcement	96.
Pesticides Enforcement Training	-
Pesticides Certification	-
Technical Support AALEC*	65.
Enforcement Policy & Operations	152.
Toxics Enforcement	68.
Hazardous Substances Response Enforcement	95.
Technical Support AALEC*	15.
Superfund	-
Hazardous Waste Response Enforcement	69.
SUBTOTAL	1,472.
Office of Legal and Enforcement Council Program Management**	10.
TOTALS	1,483.

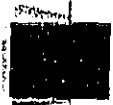
* AALEC - Associate Administrator Council.

** Although Program Management is prioration, it has been included of enforcement resources.

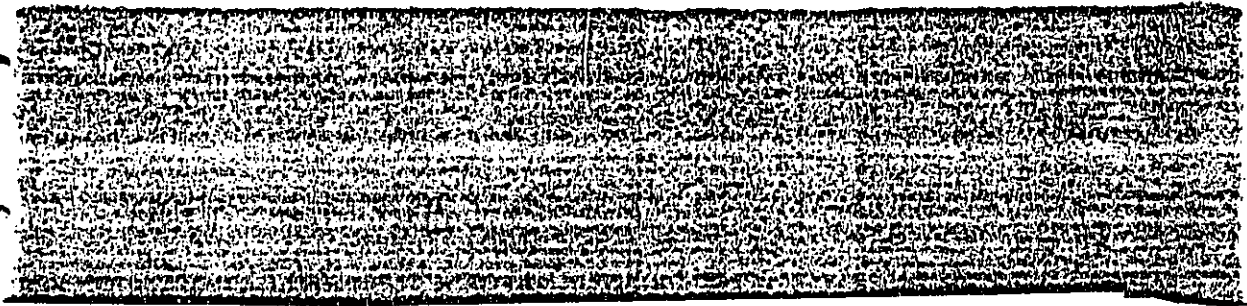
PENALTY FOR NON-COMPLIANCE

Question: On July 28, 1980, the collection of administrative r that are violating the law by fail necessary pollution control device EPA will be able to assess and col equal to the economic savings a f: with the law. These penalties wou other payment, sanctions or requir: Act.

How much administrative leaw: Air Act to establish such administ



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s, and in the commitment of the
 riority of the Banking Committee
 ve will be able to proceed expedi-
 record already developed, rather
 h the new Congress.

JOHN H. CHAFEE.

Calendar No. 776

97TH CONGRESS }
 2d Session

SENATE

{ REPORT
 No. 97-537

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—INDEPENDENT AGENCIES APPROPRIATION BILL, 1983

SEPTEMBER 9 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. GARN, from the Committee on Appropriations,
 submitted the following

REPORT

[To accompany S. 2880]

The Committee on Appropriations reports to the Senate the bill (S. 2880) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1983, and for other purposes, and presents herewith an explanation of the contents of the bill.

AMOUNT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY

	<i>Fiscal year 1983</i>
Amount of bill as recommended in House	\$46,995,739,000
Amount of change by Committee.....	+ 535,706,200
Amount of bill as reported to Senate.....	47,531,445,200
Amount of appropriations to date, 1982.....	57,267,884,240
Amount of budget estimates, 1983	41,400,675,000
Over estimates for 1983	+ 6,130,770,200
Under appropriations for 1982.....	- 9,736,439,040
Amount of subcommittee allocation, 1983	56,500,000,000
Under allocation.....	- 8,968,554,800

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ity awareness (\$228,100).—The Commission will reduce accidental ingestions of prescription drugs by working with State Boards of Pharmacy to develop child-resistant closure dispensing regulations and child-resistant materials for pharmacy and medical use.

air awareness of ingestion hazards, fuel-fired appliances (\$303,300).—The Commission will attempt to reduce exposure to potentially dangerous appliances which cause respiratory illness and are used in gas space heaters and other fuel-fired

is (\$271,800).—The Commission will coordinate child-resistant closures of substances and, if necessary, consider alternative closures. A dual purpose closure is either a child-resistant or conventional

(\$163,200).—The Commission will investigate hazards from school laboratory chemicals to be taken by students and their teachers. Make a strong effort to find substitutes for

over the reprogrammings necessary to provide levels indicated above. The Commission will submit a report by March 1, 1983 detailing the milestones associated with each of these

OF DEFENSE—CIVIL

EXPENSES, ARMY

AND EXPENSES

.....	\$4,476,000
.....	6,689,000
.....	6,689,000
.....	6,682,000

an appropriation of \$6,682,000 for the program of the Army. This is \$7,000 less than the House allowance.

DESCRIPTION

of Arlington National Cemetery and the Secretary of the Army is vested in the Secretary of the Army. Arlington and Soldiers' Home National Cemeteries contain the remains of 197,233 persons and cover 25 acres. There were 2,823 interments in 1981; 2,875 interments and 865 interments in fiscal year 1982; and 2,940 interments in fiscal year 1983. During fiscal year 1983 two interment design modifications and Arlington National Cemetery.

COMMITTEE RECOMMENDATION

The Committee recommends \$6,682,000 for cemetery expenses. Of the amount proposed by the Committee, \$6,019,000 would be used for the operation and maintenance of Arlington and Soldiers' Home National Cemeteries, including support for 140 work-years and the procurement of necessary operating supplies and equipment. Construction projects at Arlington National Cemetery are estimated to cost \$340,000 in 1983. The balance of \$323,000 will be spent on administration. The \$7,000 reduction from the budget request is intended to reduce the number of replacement vehicles which will be acquired in fiscal year 1983 from three to two.

ENVIRONMENTAL PROTECTION AGENCY

1982 appropriation	\$3,702,612,000
1983 budget estimate	3,635,392,000
House allowance	3,707,742,000
Committee recommendation	3,699,620,200

The Committee recommends an appropriation of \$3,699,620,200 for all of EPA's programs in fiscal year 1983. This amount is \$64,228,200 more than the budget estimate and \$8,121,800 less than the House allowance.

GENERAL DESCRIPTION

The Environmental Protection Agency (EPA) was created through an executive reorganization plan—Reorganization Plan No. 3 of 1970—designed to consolidate certain Federal Government environmental activities into a single agency. The plan was submitted by the President to the Congress on July 8, 1970 and the Agency was established as an independent agency in the executive branch on December 2, 1970 by consolidating 15 components from 5 departments and independent agencies.

EPA is responsible for major Federal environmental pollution abatement, control, and compliance programs in the areas of air, water quality, drinking water, hazardous waste, pesticides, radiation, noise, and toxic substances and for the investigation and cleanup of uncontrolled hazardous waste sites and spills, and is mandated to mount an integrated, coordinated attack on environmental pollution in cooperation with State and local governments. Specifically, EPA is responsible for developing and implementing programs which involve the development of environmental standards; monitoring and surveillance of pollution conditions; grant support for State and local water quality pollution control planning; direct Federal pollution control planning; grant support for State, regional, and local pollution control programs; technical assistance to pollution control programs; and technical assistance to pollution control agencies and organizations.

A description of EPA's pollution control programs by media follows.

Air.—The Clean Air Act authorizes a national program of air pollution research, regulation, and enforcement activities. Under the act, primary responsibility for the prevention and control of air pollution at its sources rests with State and local government, with a strong mandate



that the Environmental Protection Agency take action when States do not fulfill their responsibilities. EPA's role is to conduct research and development programs, insure that adequate standards and regulations are established to meet environmental goals set by the act, support State and local control activities, and insure that the standards and regulations are effectively enforced. The air program encompasses activities related to the development and implementation of air pollution control strategies and achievement of air quality standards.

Water quality.—The Clean Water Act, as amended in 1977 and 1981, provides the framework for protection of the Nation's waters. The law recognizes that it is the primary responsibility of the States to prevent, reduce, and eliminate water pollution. The States determine the desired uses for their waters, set standards, identify current uses, and, where uses are being impaired or threatened, develop plans for the protection or restoration of the designated use. They implement the plans through control programs such as permitting and enforcement, construction of municipal wastewater treatment works, and nonpoint source control practices. The act also calls for the reliance on technology-based effluent limitations for control of industrial and municipal point sources of water pollution. If designated uses will not be attained through the technology limits established, the States must either seek a greater level of control or reexamine the viability of designated uses.

The Marine Protection, Research, and Sanctuaries Act also forms a part of the framework to protect the Nation's waters. It authorizes the Agency to regulate ocean dumping through the development of regulations and criteria and through an ocean dumping permit program.

The Environmental Protection Agency has the role of establishing national regulations and guidelines to assure that the goals of the acts are met; conducting research and development on methods, procedures, and technologies for water pollution control; making grants to support State and local activities; and insuring that standards and regulations are enforced effectively.

Drinking water.—The purpose of the drinking water program is to assure that the Nation's public drinking water is safe. In the time since a Federal role was established with the Safe Drinking Water Act of 1974, four times the number of community water systems are regularly monitoring drinking water quality in conformance with consistent national regulations. Today nearly 25 percent more community systems are in regular compliance with established standards. Along with this progress, however, has come a greater awareness of emerging hazards, such as the more widespread occurrence of water-borne disease and the growing incidence of chemical contamination of ground water sources.

The drinking water program encompasses the following activities: (1) establishing national drinking water standards; (2) protecting underground sources of drinking water, particularly by controlling underground injection of wastes; (3) assisting the States in assuming primary responsibility for monitoring and enforcing compliance with national standards and regulations; and (4) implementing programs for public water system supervision and underground injection control in States.

Hazardous waste.—Approximately 4 million tons of hazardous waste, such as toxic chemicals, pesticides, and explosives, were generated in 1981. The amount of hazardous waste will increase by nearly 4 million tons by 1990.

The Solid Waste Disposal Act, as amended, and the Resource Conservation and Recovery Act of 1976 (RCRA) provide the framework for a program to protect public health and the environment from hazards caused by improper waste management. The RCRA authorizes EPA to develop a regulatory program to control hazardous waste disposal, including a national program of hazardous waste resource conservation, enforcement, and financial assistance. The RCRA program of this program. EPA's strategy for RCRA places emphasis on the program for control of hazardous waste.

Pesticides.—The objective of the pesticide program is to protect public health and the environment from the hazards of pesticide use while permitting the use of necessary pesticides. The program objective is pursued by EPA through (1) development of existing and new pesticide products; (2) enforcement of pesticide use regulations; and (3) development to reinforce the ability to control pesticides.

Radiation.—The radiation programs regulate the exposure of persons to ionizing radiation from medical or industrial sources, from medical or industrial power sources. While some exposure is unavoidable, EPA takes the position that no avoidable exposure should occur to individuals or to the general public. EPA pursues this protective goal through a series of activities: (1) development of criteria for radiation protection; (2) assessment of the environmental radiation levels; (3) projects and programs; and (4) surveillance of the environment.

EPA also pursues studies of the possible health effects of radiation. Data from these studies will be used to guide the radiation program if required and, if so, guide the program.

Noise.—The intent of the Noise Control Act (the Quiet Communities Act of 1978), is to reduce the impact of noise which jeopardizes public health and the environment. EPA is authorized to set noise emission standards, provide technical assistance to State and local jurisdictions, and conduct noise related research and control activities.

Program objectives were pursued through a series of thrusts. First, emission standards and regulations were promulgated on selected products; second, enforcement efforts were strengthened through the development of a national noise survey and limited financial assistance through Federal activities relating to noise research and control.

tion Agency take action when States do not. EPA's role is to conduct research and set adequate standards and regulations to meet the goals set by the act, support State efforts to insure that the standards and regulations are met, and the air program encompasses activities relating to the implementation of air pollution control standards.

The Clean Water Act, as amended in 1977 and 1981, provides for the protection of the Nation's waters. The law places the primary responsibility of the States to prevent pollution. The States determine the desired water quality standards, identify current uses, and, where necessary, develop plans for the protection of the waters. They implement the plans through the construction and enforcement, construction of treatment works, and nonpoint source control. The reliance on technology-based effluent standards for industrial and municipal point sources will not be attained through the Clean Water Act. States must either seek a greater level of protection or designate uses.

The National Sanctuaries Act also forms a part of the Nation's waters. It authorizes the States to develop the development of regulating ocean dumping permit program.

The Agency has the role of establishing national standards to assure that the goals of the acts are met through the development of methods, procedures, and enforcement control; making grants to support States in carrying out standards and regulations.

The objective of the drinking water program is to assure that drinking water is safe. In the time since the Safe Drinking Water Act of 1974, community water systems are regularly inspected in conformance with consistent national standards. 25 percent more community systems are now established standards. Along with this program, there is a growing awareness of emerging hazards, the prevention of water-borne disease and the contamination of ground water sources. The program encompasses the following activities: (1) setting national standards; (2) protecting underground aquifers, particularly by controlling underground injection in States assuming primary responsibility for enforcing compliance with national standards; and (3) implementing programs for public water supply and ground injection control in States.

Hazardous waste.—Approximately 43 million metric tons of hazardous waste, such as toxic chemicals, pesticides, acids, caustics, flammables and explosives, were generated in 1981. By 1983, the amount of hazardous waste will increase by nearly 4 million metric tons.

The Solid Waste Disposal Act, amended by the Resource Conservation and Recovery Act of 1976 (RCRA) established the first national program to protect public health and the environment from the damages caused by improper waste management practices, and mandated EPA to develop a regulatory program which will reduce risks from improper hazardous waste disposal practices. The act authorized a national program of hazardous waste research, regulation, implementation, enforcement, and financial assistance to support State implementation of this program. EPA's strategy for addressing these responsibilities under RCRA places emphasis on the implementation of a regulatory program for control of hazardous wastes.

Pesticides.—The objective of the pesticide program is to protect the public health and the environment from unreasonable pesticide risks while permitting the use of necessary pest control technologies. This objective is pursued by EPA through three principal means: (1) review of existing and new pesticide products including registration of pesticides; (2) enforcement of pesticide use rules; and (3) research and development to reinforce the ability to evaluate the risks and benefits of pesticides.

Radiation.—The radiation programs' major emphasis is to minimize the exposure of persons to ionizing radiation, whether from naturally occurring sources, from medical or industrial applications or nuclear power sources. While some exposure to radiation is inevitable, EPA takes the position that no avoidable risk attributable to such exposure should occur to individuals or to the environment without offsetting benefits. EPA pursues this protective goal through three interdependent sets of activities: (1) development of criteria, standards, and guidelines; (2) assessment of the environmental impact of other Federal agency projects and programs; and (3) surveillance of radiation levels in the environment.

EPA also pursues studies of the possible health effects of nonionizing radiation. Data from these studies will indicate whether control of such radiation is required and, if so, guide the setting of appropriate levels.

Noise.—The intent of the Noise Control Act of 1972 (as amended by the Quiet Communities Act of 1978), is to promote an environment free from noise which jeopardizes public health or welfare. EPA has been authorized to set noise emission standards, provide financial and technical assistance to State and local jurisdictions, and coordinate Federal noise related research and control activities.

Program objectives were pursued through four major program thrusts. First, emission standards and/or labeling regulations were promulgated on selected products; second, State and local noise control efforts were strengthened through the provision of technical assistance and limited financial assistance through cooperative agreements; third, Federal activities relating to noise research and abatement and control

were coordinated; and fourth, investigations on noise effects and abatement and control technology were conducted. State and local jurisdictions are managing this program without direct EPA involvement. For both 1981 and 1982, activities of the noise program were structured to achieve a prompt but orderly phase-out of current program activities by transferring to the State and local programs the knowledge and experience EPA has gained. State and local jurisdictions are now managing this program without direct EPA involvement.

Toxic substances.—The Toxic Substances Control Act (TSCA) establishes a program to stimulate the development of adequate data on the effects of chemical substances on health and the environment, and control action for those chemicals which present an unreasonable risk of injury to health or the environment. The act's coverage is broad, affecting more than 55,000 chemicals currently in commerce, all new chemicals, and about 115,000 manufacturers and processors.

The major programs that the Agency must develop and implement to carry out the provisions of the act are those to: (1) require testing of chemicals and submission of reports of existing information by industry and review these and other data to determine chemical hazards; (2) review and act on new chemical and significant new use notifications by industry; (3) control the manufacturing, processing, distribution, use, and disposal of existing chemicals that pose unreasonable risks to health and the environment; (4) enforce these statutory and regulatory programs; (5) conduct research and development to support the implementation of the law; and (6) insure that all Agency programs dealing with toxic substances coordinate and integrate risk assessments, priority-setting and regulatory actions taken so that the most significant problems are dealt with, at the least cost to the Agency, industry, and the public.

Interdisciplinary.—The interdisciplinary medium is designed to support programs where the problems, tools, and results are multidisciplinary in nature and must be coalesced into an integrated program. This integrated program encompasses the Agency's litigation and enforcement policy activities. This concept is also employed in the Agency's efforts to forecast future environmental problems, to develop and coordinate a long-range R. & D. agenda, to review environmental impact statements (EIS's), to prepare new source EIS's, to review and permit major development projects, and to promote compliance of Federal activities with regulations for environmental pollution control.

Energy.—The primary objective of the energy research and development program is to insure that the Nation's energy production and utilization practices proceed in an environmentally acceptable manner. Satisfying this objective requires research and development activities in four distinct areas. These are: (1) developing the scientific data necessary to understand the phenomena of acid precipitation; (2) developing the necessary health and environmental data base associated with new or emerging energy processes; (3) developing the necessary performance, reliability, and cost data on energy-related pollution control technologies; and (4) developing and validating air quality models and

complex terrain models to measure air quality, transport, and fate of pollutants produced by energy sources.

SALARIES

1982 appropriation	
1983 budget estimate	
House allowance	
Committee recommendation	

The Committee recommends a amount is \$10,500,000 more than the House allowance.

PROGRAM:

The salaries and expenses appropriated for EPA's programs, exclusive of specific program agreements for executive direction, management, at headquarters and the 10 regional and administrative costs associated with compliance, research and development, and other program activities are appropriated as follows:

1. **Program management.**—This activity covers the salaries and expenses of the assistant administrators of the Offices of Water, Air, Noise, and Solid Waste and Emergency Response.

2. **Agency management.**—This activity covers the salaries and expenses of the administrative staffs which report directly to the Administrator, the Office of Legal and Enforcement Counsel, the Office of Policy and Resource Management, and the Office of Congressional and Public Affairs.

3. **Regional management.**—This activity covers the salaries and expenses of the regional administrators, their immediate staffs and other personnel such as intergovernmental relations, and other regional management functions. Regional management also includes planning and analysis, personnel management, and administrative support.

4. **Program support.**—This activity covers the salaries and expenses of the administrative staffs of the Offices of Research and Development, Toxic Substances, and Air, Noise, and Solid Waste and Emergency Response, mainly of laboratory and office support and other housekeeping items.

5. **Agency support.**—This activity covers the salaries and expenses of the administrative staffs of the Research Triangle Park, and Cincinnati offices, and other agencywide costs which are managed by the Office of Administration and support the needs of all Agency program activities, including facilities rent and ADP support.

investigations on noise effects and abatement conducted. State and local jurisdictions without direct EPA involvement. For the noise program were structured to be out of current program activities by programs the knowledge and experience of local jurisdictions are now managed through EPA involvement.

The Toxic Substances Control Act (TSCA) establishment of adequate data on the health and the environment, and which present an unreasonable risk of harm. The act's coverage is broad, affecting all new chemicals and processors.

Industry must develop and implement to ensure those to: (1) require testing of existing information by industry to determine chemical hazards; (2) significant new use notifications by testing, processing, distribution, use, and disposal of chemicals that pose unreasonable risks to health. These statutory and regulatory provisions are developed to support the implementation of all Agency programs dealing with risk assessments, priority-setting, and so that the most significant problems to the Agency, industry, and the

primary medium is designed to support, and results are multidisciplinary into an integrated program. This Agency's litigation and enforcement is also employed in the Agency's efforts to solve environmental problems, to develop and coordinate review environmental impact statements, to review and permit development of Federal environmental pollution control.

the energy research and development of the Nation's energy production and distribution in an environmentally acceptable manner. Research and development activities in developing the scientific data necessary for acid precipitation; (2) developmental data base associated with developing the necessary performance-related pollution control standards and validating air quality models and

complex terrain models to more accurately understand the transformation, transport, and fate of gases and particles in the atmosphere produced by energy sources.

SALARIES AND EXPENSES

1982 appropriation	5555,105,700
1983 budget estimate	538,113,200
House allowance	544,963,000
Committee recommendation	548,613,200

The Committee recommends an appropriation of \$548,613,200. This amount is \$10,500,000 more than the budget estimate and \$3,650,200 more than the House allowance.

PROGRAM DESCRIPTION

The salaries and expenses appropriation supports all costs of administering EPA's programs, exclusive of grant programs and contractual agreements for specific programs. This account provides support for executive direction, management, and support for all Agency programs at headquarters and the 10 regional offices. In addition to personnel and administrative costs associated with abatement, control and compliance, research and development, and enforcement activities, the salaries and expenses appropriation supports the following functions:

- 1. Program management.**—This activity covers the salaries and related expenses for the assistant administrators and immediate staffs in the Offices of Water; Air, Noise, and Radiation; Pesticides and Toxic Substances; Solid Waste and Emergency Response; and Research and Development.
- 2. Agency management.**—This activity supports agencywide policy direction and management activities, including the salaries and associated costs for: the immediate Office of the Administrator; the offices which report directly to the Administrator; portions of the Office of Legal and Enforcement Counsel; the Office of Administration; and the Office of Policy and Resource Management.
- 3. Regional management.**—This activity supports the regional administrators, their immediate staffs and the staff offices reporting directly to them such as intergovernmental relations, public affairs, and civil rights. Regional management also includes the regions' central management functions: planning and analysis, budgeting, financial management, personnel management, and administrative services.
- 4. Program support.**—This activity supports operation of the laboratories of the Offices of Research and Development; Pesticides and Toxic Substances; and Air, Noise, and Radiation. These costs consist mainly of laboratory and office services, utilities, building maintenance, and other housekeeping items.
- 5. Agency support.**—This activity provides general office and building services and support for program operations at EPA headquarters, Research Triangle Park, and Cincinnati. Agency support also includes agencywide costs which are managed at headquarters and which support the needs of all Agency programs. Examples of such costs include facilities rent and ADP support.

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6. Regional support.—This activity supports basic needs of the regions, including telephone service, guard services, printing and copying services, rental of office equipment, ADP equipment, and other office and building services.

COMMITTEE RECOMMENDATION

The Committee recommends a level of \$548,613,200 for EPA's salaries and expense account. Within this amount the Committee has included an additional \$1,000,000 and nine positions for the Great Lakes program, thus restoring the effort to \$2,390,300 and 24 FTE and retained the laboratory at Grosse Ile, Michigan. These additional funds are needed to support the higher program level provided by the Committee in the R. & D. and abatement, control, and compliance accounts. In this regard the Committee notes that a recent GAO report (May 12, 1982) concludes "Despite spending millions of dollars on water pollution control, the United States is finding it difficult to meet the comprehensive objectives of its Great Lakes water quality agreement with Canada. Although the lakes are cleaner, the United States is not fully meeting its agreement commitments." The report also states that "U.S. efforts have been hampered by the (1) lack of effective overall strategies for dealing with Great Lakes water quality problems, (2) lack of knowledge about the extent of pollution problems and the impact of control programs, and (3) need for improved management of Great Lakes pollution cleanup activities." The Committee expects EPA to provide the management focus, and visibility to this program that it needs in order to effectively address the problems of the Great Lakes. The Committee expects EPA to report back with suggested changes to the program on March 1, 1983.

The Committee also recommends a reduction of \$1,000,000 to be applied to the agencies support services. The 1983 budget contains \$12,240,800 or a 12-percent increase for this activity. The Committee would like to note that the agency has taken a variety of management actions that have saved several millions of dollars. The Committee expects that these activities will continue during 1983 and result in additional savings.

The Committee notes that a GSA (August 1, 1981) report on EPA's management of its word processing equipment concluded that the agency has wasted between \$2,000,000 and \$4,000,000 annually in this area. Apparently EPA cannot provide the Committee with an estimate of its word processing needs for fiscal year 1983. The Committee expects to receive such an estimate 30 days after enactment of the 1983 HUD-Independent Agencies Appropriations bill.

The Committee has added an additional \$10,500,000 to cover an expected shortfall in personnel and compensation benefits if EPA maintained its fiscal year 1982 end-of-year work force throughout fiscal year 1983, excluding losses through normal attrition. The Committee believes that EPA's work force should be stabilized and that further reduction, at this time, would be disruptive to the programs. Consequently, the Committee has included bill language prohibiting reductions in force

that would result in the use of less during fiscal year 1983.

RESEARCH AND

1982 appropriation	.....
1983 budget estimate	.....
House allowance	.....
Committee recommendation	.....

The Committee recommends an EPA's research and development amount is \$6,296,200 more than the than the House allowance.

PROGRAM D

EPA's research and development ; scientific knowledge and the tools fighting pollution. The Agency's research ducted through grants, contracts, an dustries, other private commercial fi and local government, and Federal performed at EPA's laboratories and

The research and development pr as research on the effects of polluz plants, materials, and the general e esses, such as dispersion, that affect and improved sampling and analyt measuring pollutants; the developm improved technology for preventing covery of materials from wastes; and necessary to facilitate the use of don lar emphasis on coal and the conc control technologies for emerging e; costs and environmental impact.

COMMITTEE RECC

The Committee recommends a lev development. The increase consists Great Lakes research. These funds loading studies to determine the sou stances in the Great Lakes.

The Committee has also included of phosphate processing. EPA is c study of waste streams generated du of ores and minerals, as mandated by RCRA. Part of this study includes ar tion, washing, and cleaning operatic however, is not included as part of used as a basis to respond to the stu Solid Waste Disposal Act Amendmer in September 1979, and is expecte October 1983.

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activity supports basic needs of the re-
se, guard services, printing and copying
ent, ADP equipment, and other office

RECOMMENDATION

a level of \$548,613,200 for EPA's sal-
in this amount the Committee has in-
and nine positions for the Great Lakes
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itee notes that a recent GAO report
pite spending millions of dollars on
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its Great Lakes water quality agree-
lakes are cleaner, the United States is
commitments." The report also states
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at Lakes water quality problems, (2)
tent of pollution problems and the
3) need for improved management of
ivities." The Committee expects EPA
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report back with suggested changes to

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A (August 1, 1981) report on EPA's
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additional \$10,500,000 to cover an
compensation benefits if EPA main-
our work force throughout fiscal year
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abilized and that further reduction,
the programs. Consequently, the
age prohibiting reductions in force

that would result in the use of less work-years than specified in the bill
during fiscal year 1983.

RESEARCH AND DEVELOPMENT

1982 appropriation	\$154,315,600
1983 budget estimate	108,703,800
House allowance	121,204,000
Committee recommendation	115,000,000

The Committee recommends an appropriation of \$115,000,000 for
EPA's research and development program in fiscal year 1983. This
amount is \$6,296,200 more than the budget estimate and \$6,204,000 less
than the House allowance.

PROGRAM DESCRIPTION

EPA's research and development program is designed to produce the
scientific knowledge and the tools for regulating, preventing, and abat-
ing pollution. The Agency's research and development efforts are con-
ducted through grants, contracts, and agreements with universities, in-
dustries, other private commercial firms, nonprofit organizations, State
and local government, and Federal agencies, as well as through work
performed at EPA's laboratories and field stations.

The research and development program encompasses activities such
as research on the effects of pollutants on man, animals, aquatic life,
plants, materials, and the general environment; research on the pro-
cesses, such as dispersion, that affect pollution; the development of new
and improved sampling and analytical methods and instruments for
measuring pollutants; the development and demonstration of new and
improved technology for preventing and controlling pollution and re-
covery of materials from wastes; and insuring environmental protection
necessary to facilitate the use of domestic energy supplies with particu-
lar emphasis on coal and the concurrent development of appropriate
control technologies for emerging energy systems to minimize control
costs and environmental impact.

COMMITTEE RECOMMENDATION

The Committee recommends a level of \$115,000,000 for research and
development. The increase consists of an additional \$1,500,000 for
Great Lakes research. These funds would be used to continue toxic
loading studies to determine the sources and distribution of toxic sub-
stances in the Great Lakes.

The Committee has also included an additional \$270,000 for a study
of phosphate processing. EPA is currently involved in a \$3,000,000
study of waste streams generated during the extraction and processing
of ores and minerals, as mandated by Congress under section 8002(f) of
RCRA. Part of this study includes an examination of phosphate extrac-
tion, washing, and cleaning operations. The processing of phosphate,
however, is not included as part of this effort. This study will also be
used as a basis to respond to the study mandated by section 29 of the
Solid Waste Disposal Act Amendments of 1980. The study was initiated
in September 1979, and is expected to be reported to Congress in
October 1983.

The Committee also recommends an additional \$4,526,200 to be applied on a priority basis at the Agency's discretion. The Committee notes that health effects and anticipatory research are two areas where these additional research funds could be productively used.

Within funds provided, EPA should resume support for cold weather research in cooperation with the appropriate State agencies. There are numerous environmental problems unique to Arctic and sub-Arctic environments which need to be addressed if man is to continue to live in these regions and develop their resources safely.

ABATEMENT, CONTROL AND COMPLIANCE

1982 appropriation	\$372,969,700
1983 budget estimate	311,575,000
House allowance	364,575,000
Committee recommendation	365,007,000

The Committee recommends an appropriation of \$365,007,000 for abatement, control, and compliance activities. This amount is \$53,432,000 more than the budget estimate and \$432,000 more than the House allowance.

PROGRAM DESCRIPTION

The Agency's abatement and control effort includes the development of environmental standards; monitoring and surveillance of pollution conditions; grant support for State and local water quality pollution control planning; direct Federal pollution control planning; grant support for State, regional, and local pollution control programs; technical assistance to pollution control agencies and organizations; and assistance to Federal agencies in complying with environmental standards and insuring that their activities have minimal environmental impact.

The compliance activity at EPA—formerly called enforcement under the old appropriation account structure—encompasses the areas of air and water pollution control, drinking water, pesticides, solid waste, and toxic substances. A major part of the Agency's compliance effort involves support of or cooperation with State and local enforcement programs, such as enforcement of air quality standards, navigable and interstate water quality standards, issuance of pollution discharge permits, and issuance of hazardous waste permits and compliance monitoring. Notices of violation, abatement orders, enforcement conferences, civil and criminal court actions, and, in the case of pesticides, recalls and seizures, are used by the Agency as tools to implement its enforcement responsibilities.

COMMITTEE RECOMMENDATION

The Committee recommends \$365,007,000 for abatement, control, and compliance. The Committee has recommended funding above the budget request levels of \$43,906,800 for the State grants programs as follows: air (section 105), +\$17,780,200; water quality (section 106), +\$10,354,400; public water systems program grant, +\$5,890,000; underground injection control program, +\$1,034,300; hazardous waste management, +\$6,563,400; and pesticides and toxic enforcement grants, +\$2,284,500. These increases restore all of these programs to their fiscal

year 1982 levels. The Committee has taken the additional responsibilities placed on it through an accelerated delegation process.

The Committee also recommends an additional \$10,000,000 for the National Rural Water Association, State technical assistance program. This will provide a program over the 1982 level. The Committee is indicating the value of providing additional support for the huge Federal investment in wastewater treatment manpower training. Consequently the Committee has added about the 1982 level. The Committee is also restoring academic training to the \$1.0 million year 1982.

The Committee has included an additional Lakes program. This provides a level of program in this account. These additional funds are used to continue the section 108(a) program to test new or innovative wastewater technology, water intake and high flow tributary water quality trends and pollutant loadings to lakes.

The Committee has also recommended the continuation of existing projects in the clean lakes program. The Committee's recommendation is to close out this program. House conferees have agreed to. Given this history, the Committee believes that the House has now suggested additional funding in order to "complete existing implementation." The Committee expects to review its position relative to the Lakes program in the implementation plan for fiscal year 1983.

The fiscal year 1982 Urgent Supplemental Appropriation Act contained language to permit EPA to fund facilities where the mechanical plants have expired the warranty period and where the existing facilities have proven to be inoperable by the local municipality. The bill language requiring EPA to fund such a facility (Inverness, Mississippi) that already has such an inoperable system. It is estimated that the costs for this facility are \$45,000.

BUILDINGS AND FACILITIES

1982 appropriation	
1983 budget estimate	
House allowance	
Committee recommendation	

The Committee recommends an appropriation of \$10,000,000 for buildings and facilities in fiscal year 1983. This amount is \$10,000,000 above the budget estimate and the House allowance.

PROGRAM DESCRIPTION

The appropriation for buildings and facilities at EPA covers the necessary repairs and improvements to installations which are used by the Agency. In fiscal year 1983, the Agency intends to focus its resources on improving health and safety conditions at various facilities, as well as on space planning, reconfigurations, and alterations associated with space reductions begun in fiscal year 1982.

COMMITTEE RECOMMENDATION

The Committee concurs with the House in recommending the budget request of \$3,000,000 for this account. Repair and improvement projects exceeding \$250,000 in estimated cost should not be undertaken without the specific approval of the House and Senate Committees on Appropriations.

PAYMENT TO THE HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

1982 appropriation	\$26,600,000
1983 budget estimate	44,000,000
House allowance	44,000,000
Committee recommendation	38,000,000

The Committee recommends an appropriation of \$38,000,000 for this account. This amount is \$6,000,000 less than the budget estimate and the House allowance.

PROGRAM DESCRIPTION

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, established the hazardous substance response trust fund. The trust fund is financed principally by industry fees, recovered moneys, interest on investments, and appropriations. This account represents the Federal payment into the trust fund.

COMMITTEE RECOMMENDATION

The Committee recommends \$38,000,000 for the Federal payments into the trust fund. The reduction of \$6,000,000 from the request level represents a proportional decrease based on the Committee's recommended level for the hazardous substances response trust fund discussed under the following heading.

HAZARDOUS RESPONSE TRUST FUND

1982 appropriation	\$190,000,000
1983 budget estimate	230,000,000
House allowance	230,000,000
Committee recommendation	200,000,000

The Committee recommends an appropriation of \$200,000,000 for the hazardous response trust fund. This amount is \$30,000,000 less than the budget estimate and the House allowance.

PROGRAM DESCRIPTION

On December 11, 1980, Congress established the Superfund program. The Superfund program provides for the cleanup of uncontrolled hazardous waste sites. The program mandates that EPA: (1) provide for the cleanup of hazardous waste spills; (2) take emergency action to prevent or minimize the exposure of an imminent hazard to public health and the environment; (3) engage in long-term construction to clean up hazardous waste sites; (4) take enforcement actions to recover costs from responsible private parties to clean up; (5) take enforcement actions to recover costs from responsible parties to clean up.

COMMITTEE RECOMMENDATION

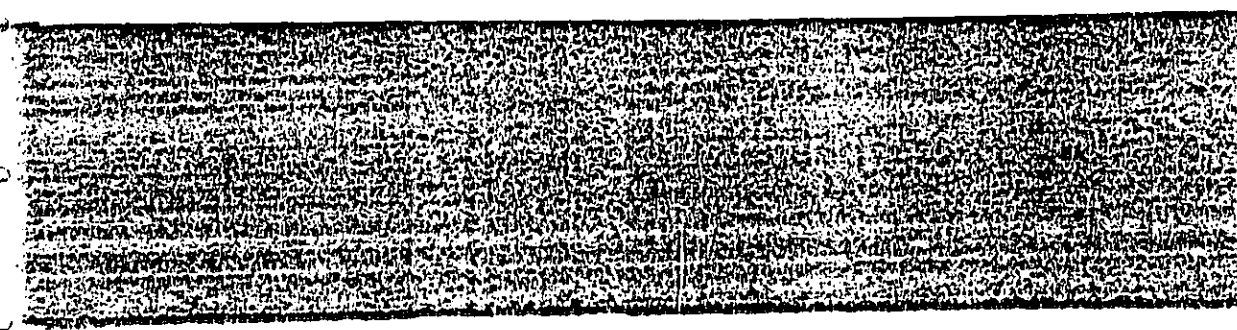
The Committee recommends a level of funding for Superfund activities. This is \$30,000,000 less than the fiscal year 1982 level. The Committee notes with dismay that only 13 contracts on three sites have been signed. The Committee has asked the Agency to provide a quarterly report on Superfund implementation including a list of sites to be cleaned up. The Committee intends to closely monitor this program.

As the GAO witness stated in testimony, "... so there is plenty of money. The Committee notes with dismay that only 13 contracts on three sites have been signed. The Committee has asked the Agency to provide a quarterly report on Superfund implementation including a list of sites to be cleaned up. The Committee intends to closely monitor this program.

Included within the amounts provided for Superfund are 516 permanent work-years. The bill provides for administrative expenses of \$37,380,000 for Superfund activities, including a 10 percent additional salary and expense items and benefits, \$2,723,000 for travel, \$3,000,000 for rent, and \$4,040,000 for equity.

EPA estimates that emergency response for 60 waste sites will be possible in 1983. EPA is conducting preliminary assessments and site investigations and 11 remedial actions. EPA is also concentrating on health hazard sites and 11 remedial actions. EPA is also planning in 1983.

A total of \$15,326,000 and 82 permanent positions are needed for the management and support of the Superfund program.



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DESCRIPTION

and facilities at EPA covers the need for installations which are used by the Agency intends to focus its resources on conditions at various facilities, as well as repairs, and alterations associated with them in 1982.

COMMITTEE RECOMMENDATION

House in recommending the budget for 1982. Repair and improvement projects should not be undertaken without the approval of the House and Senate Committees on Appropriations.

HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

.....	\$26,600,000
.....	44,000,000
.....	44,000,000
.....	38,000,000

Appropriation of \$38,000,000 for this fund is less than the budget estimate and

DESCRIPTION

The Superfund Response, Compensation, and Liability Act of 1980, established the hazardous substance response trust fund. The fund is financed principally by interest on investments, and appropriate Federal payment into the trust fund.

COMMITTEE RECOMMENDATION

The Committee recommends \$38,000,000 for the Federal payments for 1982, \$5,000,000 from the request level based on the Committee's recommendation. The hazardous substance response trust fund dis-

HAZARDOUS SUBSTANCE TRUST FUND

.....	\$190,000,000
.....	230,000,000
.....	230,000,000
.....	200,000,000

Appropriation of \$200,000,000 for the trust fund is \$30,000,000 less than the budget estimate.

PROGRAM DESCRIPTION

On December 11, 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The act established the hazardous response trust fund to address the problems of uncontrolled hazardous waste sites and spills. Specifically, the legislation mandates that EPA: (1) provide emergency response to hazardous waste spills; (2) take emergency action at hazardous waste sites that pose an imminent hazard to public health or environmentally sensitive ecosystems; (3) engage in long-term planning, remedial design, and construction to clean up hazardous waste sites where no financially responsible party can be found; (4) take enforcement actions to require responsible private parties to clean up hazardous waste sites; and (5) take enforcement actions to recover costs where the fund has been used for clean up.

COMMITTEE RECOMMENDATION

The Committee recommends a level of \$200,000,000 for "superfund" activities. This is \$30,000,000 less than the request and \$10,000,000 more than the fiscal year 1982 level. The Committee has conducted extensive superfund oversight activities. As part of that oversight the Committee conducted a 2-day workshop on site selection (March 19 and 20, 1982), held hearings on April 20, 1982 and sponsored a GAO study. In all of these instances, experts testified that the implementation problems associated with the program were not caused by the lack of appropriated funds. In fact, as of June 30, 1982, only \$116,200,000 of the \$264,700,000 appropriated has been obligated. Currently, the fund is being credited with receipts of \$24,400,000 per month, with obligations around \$11,700,000 per month.

As the GAO witness stated in the Committee's April 20 hearing "... so there is plenty of money. That is not the problem." The Committee notes with dismay that only 13 cooperative agreements and State contracts on three sites have been signed to date. The Committee has asked the Agency to provide a quarterly update of the status of the superfund implementation including data on 18 action items. The Committee intends to closely monitor this situation.

Included within the amounts provided is funding for an estimated 516 permanent work-years. The bill also includes a provision limiting administrative expenses to \$37,350,000. The amount represents traditional salary and expense items and is identical to the budget request for these activities. It includes \$26,963,000 for personnel compensation and benefits, \$2,723,000 for travel, \$3,654,000 for communications, utilities, and rent, and \$4,040,000 for equipment and other expenses.

EPA estimates that emergency responses to about 50 major spills and 60 waste sites will be possible in 1983. Remedial activities will include preliminary assessments and site inspections, as well as 36 full field investigations and 11 remedial actions. Research and development activities concentrating on health hazard assessment of released substances are also planned in 1983.

A total of \$15,326,000 and 82 permanent work-years is estimated for management and support of the superfund in 1983. This includes gen-

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eral program management and support, planning and evaluation, financial control, laboratory equipment, and housekeeping services.

Public Law 94-580 authorizes \$20,000,000, under section 3012, for use by States to conduct State hazardous waste site surveys. Many States have already invested substantial sums on site inspection and evaluation. The Committee has included bill language providing the \$20,000,000 in order to accelerate the site discovery/assessment process.

Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (Public Law 96-510) authorizes the use of funds from the trust fund for medical and research activities to be undertaken by the Department of Health and Human Services. In Public Law 97-216, the Congress earmarked \$7,000,000 from the hazardous response trust fund for the Department to carryout its superfund activities during fiscal year 1982. For 1983 the Committee has included bill language earmarking \$10,000,000. Of this amount \$8,000,000 would be used for continuing staff support at the Department and \$2,000,000 for discretionary activities such as health inspections at specific hazardous waste sites. The Committee believes that with the additional funding, the Department will be able to devote more resources to training of State personnel; purchase needed lab equipment; develop an ADP system for the toxicological registry; and develop hazardous waste handling manuals.

CONSTRUCTION GRANTS

	Appropriation	Liquidating cash
1982 appropriation.....	\$2,400,000,000	(\$1,000,000,000)
1983 budget estimate.....	2,400,000,000	
House allowance.....	2,400,000,000	
Committee recommendation.....	2,430,000,000	

The Committee recommends an appropriation of \$2,430,000,000 for the construction grants program. This amount is \$30,000,000 more than the budget estimate and the House allowance.

PROGRAM DESCRIPTION

The long-range goal of the construction grants program is to eliminate the municipal discharge of untreated or inadequately treated pollutants and thereby help restore or maintain the quality of the Nation's waters and protect the health and well-being of the people. This program provides grants to municipal and intermunicipal agencies to assist in financing the construction of cost-effective and environmentally sound municipal wastewater treatment facilities. In addition, the program provides funds to assist delegated States in carrying out their responsibilities to manage the construction grants program and to assist them in carrying out water quality management planning programs.

As a result of the municipal wastewater treatment construction grant amendments of 1981 a State may reserve 4 percent of its authorization or share of the \$400,000 to manage its delegated activities, and 1 percent of its allotment or \$100,000 for water quality management planning. The act also requires that each State set aside between 4 and 7 1/2 percent of its allotment to provide incentives to communities to use in-

novative and alternative technologies-treatment facilities; it also permits States to set aside 4 percent of their munities. All grants for assisting in the wastewater treatment facilities are to State's priority system, which is des quality.

Prior to the 1981 amendments, pro with separate grants awarded to a com design (step 2), and construction (step der to make the process more efficient the three-step procedure and provide : pleted planning and design and are a will receive an allowance to cover a po costs. Provision is also made for advan otherwise unable to finance such activ: Another provision designed to make cost-effective is the elimination of fund: These provisions are expected to signi vestment needed in the program.

The goal of the State management section 205(g) is to allow the States, rat sibility for day-to-day management o priority programs, and under section 2 to water quality management planning. tion 205(g) funds has been early achie of construction grants project managem tent of delegation and financial suppo State's ability to operate a construction tory objectives and requirements and to a State when it can show that it is a ment for a substantial portion of progr

COMMITTEE RECOM

The Committee recommends \$2,430, budget request and the House allowan to be used as authorized in section 201 lution Control Act, as amended, for a mony before the Committee indicates t be effectively used during fiscal year : caused by combined sewer overflows. EPA has submitted the following preli sidered for funding:

rt, planning and evaluation, finan-
d housekeeping services.
1,000,000, under section 3012, for
ardous waste site surveys. Many
ial sums on site inspection and
ded bill language providing the
site discovery/assessment process.
e Environmental Response, Com-
e 96-510) authorizes the use of
and research activities to be un-
and Human Services. In Public
\$7,000,000 from the hazardous
it to carryout its superfund activi-
the Committee has included bill
this amount \$8,000,000 would be
Department and \$2,000,000 for
inspections at specific hazardous
that with the additional funding,
te more resources to training of
equipment; develop an ADP sys-
d develop hazardous waste han-

GRANTS

	Appropriations	Liquidating cash
.....	\$2,400,000,000	(\$1,000,000,000)
.....	2,400,000,000	
.....	2,400,000,000	
.....	2,430,000,000	

ropriation of \$2,430,000,000 for
amount is \$30,000,000 more than
allowance.

DESCRIPTION

on grants program is to eliminate
or inadequately treated pollutants
he quality of the Nation's waters
of the people. This program pro-
municipal agencies to assist in financ-
and environmentally sound muni-
addition, the program provides
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and to assist them in carrying
programs.

ter treatment construction grant
ve 4 percent of its authorization
delegated activities, and 1 per-
water quality management plan-
ate set aside between 4 and 7 1/2
atives to communities to use in-

novative and alternative technologies in constructing their wastewater treatment facilities; it also permits States having substantial rural populations to set aside 4 percent of their funds for projects in small communities. All grants for assisting in the development and construction of wastewater treatment facilities are to be awarded on the basis of a State's priority system, which is designed to insure improved water quality.

Prior to the 1981 amendments, projects were done in three stages with separate grants awarded to a community for the planning (step 1), design (step 2), and construction (step 3) phases of each project. In order to make the process more efficient, the 1981 amendments eliminate the three-step procedure and provide that communities that have completed planning and design and are awarded a grant for construction will receive an allowance to cover a portion of the planning and design costs. Provision is also made for advances to enable small communities, otherwise unable to finance such activities, to plan and design projects. Another provision designed to make the program more efficient and cost-effective is the elimination of funding to construct reserve capacity. These provisions are expected to significantly decrease the Federal investment needed in the program.

The goal of the State management assistance grant program under section 205(g) is to allow the States, rather than EPA, to assume responsibility for day-to-day management of construction grants and other priority programs, and under section 205(j) to provide essential support to water quality management planning. The primary goal for use of section 205(g) funds has been early achievement of maximum delegation of construction grants project management to States. The timing and extent of delegation and financial support to each State depends on the State's ability to operate a construction grants program that meets statutory objectives and requirements and EPA policy. A grant is provided to a State when it can show that it is able to exercise effective management for a substantial portion of program activities.

COMMITTEE RECOMMENDATION

The Committee recommends \$2,430,000,000 or \$30,000,000 above the budget request and the House allowance. The additional \$30,000,000 is to be used as authorized in section 201(n)(2) of the Federal Water Pollution Control Act, as amended, for combined sewer overflow. Testimony before the Committee indicates that these funds, and more, could be effectively used during fiscal year 1983 to address serious problems caused by combined sewer overflows into marine bays and estuaries. EPA has submitted the following preliminary list of communities considered for funding:



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 204, 205 and 211

(N-FRL 2202-1)

Noise Emission Standards for Portable Air Compressors, Medium and Heavy Trucks, Motorcycles and Motorcycle Replacement Exhaust Systems, Truck Mounted Solid Waste Compactors, and Noise Labeling Requirements for Hearing Protectors; Final Rule; Revocation of Product Verification Testing, Reporting and Recordkeeping Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency hereby revokes product verification testing and the attendant reporting and recordkeeping requirements for:

- (1) Noise Emission Standards for Portable Air Compressors;
- (2) Noise Emission Standards for Medium and Heavy Trucks;
- (3) Noise Labeling Requirements for Hearing Protectors.
- (4) Noise Emission Standards for Truck Mounted Solid Waste Compactors;
- (5) Noise Emission Standards for Motorcycles and Motorcycle Replacement Exhaust Systems;

This action stems from the Administration's budget for fiscal year 1982 which did not contain funding for the Noise Enforcement Division to accept or act on the product verification reports after fiscal year 1981. Also, based on the comments received, EPA is revoking the production verification testing provisions.

EFFECTIVE DATE: January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Louise Giersch, (202) 382-2035

SUPPLEMENTARY INFORMATION: EPA promulgated noise regulations which established noise emission standards or labeling requirements for the following:

1. Portable Air Compressors, 40 CFR 204.50 *et seq.*, January 14, 1978 (41 FR 2182)
2. Medium and Heavy Trucks, 40 CFR 205.50 *et seq.*, April 13, 1978 (41 FR 15538)
3. Noise Labeling Requirements for Hearing Protectors, 40 CFR 211.203 *et seq.*, September 27, 1980 (44 FR 58130)
4. Truck Mounted Solid Waste Compactors, 40 CFR 205.200 *et seq.*, October 1, 1980 (44 FR 56326)
5. Motorcycles and Motorcycle Replacement Exhaust Systems, 40 CFR

205.150 *et seq.*, and 205.165 *et seq.*, December 31, 1980 (45 FR 86694).

Each of the noise regulations, listed above, imposes certain recordkeeping and reporting requirements on manufacturers of the regulated products. Contained within these regulations there are specific provisions for (1) Production Verification Testing, (2) Testing by the Administrator, and (3) Selective Enforcement Auditing. The provisions encompassing "Production Verification (PV) Testing" describe highly structured requirements to test products on an annual basis for their compliance with applicable noise emission standards in accordance with certain specified procedures. Provisions authorizing "Testing by the Administrator" describe the discretionary basis upon which the Administrator may require the testing of products to determine compliance with applicable noise emission standards as well as to determine the appropriateness of a manufacturer's test facility to conduct such product testing. The provisions related to "Selective Enforcement Auditing" (SEA) authorize the Administrator, on a discretionary basis, to require manufacturers to conduct assembly-line testing of products upon formal request. The latter two provisions apply only when an issue arises concerning product compliance with the applicable noise emission standard, while the former (PV Testing) provisions are required to be met on an annual basis.

Among these provisions there are various recordkeeping and reporting requirements, including the development and submission of PV testing reports and retention of test data supporting such reports.

On August 14, 1981, EPA suspended enforcement of reporting and recordkeeping requirements (48 FR 41057) and simultaneously proposed revocation of the reporting and recordkeeping provisions for each of these regulations (48 FR 41104). The action stemmed from that portion of the Administration's budget for Fiscal Year 1982, subsequently enacted by Congress, which did not contain funding for the Noise Enforcement Division to accept or act on the product verification reports after fiscal year 1981.

A 30 day comment period was established to allow interested parties to comment on the notice of proposed rulemaking. Fourteen written comments were received.

For the reasons discussed in the proposal and summarized below, this final action revokes the reporting and recordkeeping requirements, as proposed. Additionally, in response to the comments received, EPA is revoking

the production verification testing provisions of these regulations.

1. Public Comments

Of the fourteen written comments received, seven were from six different manufacturers, three from trade associations, two from State agencies, one from a public interest legal foundation and one from a private citizen.

Four manufacturers commented on the substance of the proposed action and voiced their support. Two of the four also recommended revocation of the product verification and selective enforcement audit requirements to give them additional flexibility to comply with applicable Federal noise emission standards. Other comments by the manufacturers were on miscellaneous information and/or typographical errors.

The three trade associations supported the proposed action, but also requested that additional steps be taken to reduce regulatory burdens on industry. One association suggested the elimination of product verification and selective enforcement audit provisions to allow manufacturers additional flexibility to comply with applicable Federal standards.

One State agency supported the proposed action, while the other stated that if EPA did not intend to enforce its regulations, they should be rescinded. The notice of proposed rulemaking announced that EPA was considering the revocation of reporting and recordkeeping provisions of its noise emission regulations. EPA retains the statutory and regulatory tools to enforce its noise emission regulations both under the Agency's general authority in Section 13 of the Noise Control Act and under selective enforcement auditing and testing by the Administrator provisions within the regulations. EPA intends to use these tools as appropriate.

The public interest legal foundation supported the proposed action and also suggested elimination of product verification, selective enforcement auditing, and testing by the Administrator provisions of the regulations.

The private citizen provided general comments on noise produced by trucks and motorcycles.

2. Agency Action

EPA has considered current and proposed future Agency resources, the President's policy to reduce the burdens of federal regulation, and public comments where appropriate and has decided to revoke the reporting and

recordkeeping requirements as proposed. Additionally, EPA has considered carefully the comments requesting that the Agency revoke additional regulatory provisions. In light of those comments, EPA is revoking the product verification testing requirements, as discussed below. It does not appear that this burden is necessary in view of the rescission of reporting and recordkeeping requirements.

With elimination of the reporting and recordkeeping requirements, the regulations become in part self-enforcing, since manufacturers no longer report their compliance efforts. Elimination of product verification is consistent with these changes, since without active monitoring by EPA of pre-production compliance, there is no reason to bind manufacturers to a formal program. This action will allow regulated manufacturers to structure their own testing programs to assure their products will meet applicable standards. However, the manufacturers must still comply with applicable standards, and must label each product and warrant that they conform to those standards. Moreover, EPA retains the right to require manufacturers to conduct noise tests, where warranted by the circumstances, both under the regulatory provisions discussed below and under the Agency's general authority in Section 13 of the Noise Control Act.

EPA has decided to retain the selective enforcement auditing and testing by the Administrator provisions in their present form. EPA believes these provisions are both necessary and adequate to determine whether a product or a manufacturer's test facility conforms to applicable specifications and/or standards. Without such provisions, there would be no federal mechanism by which questionable products could be adequately tested for compliance. In instances where there is reason to believe non-complying products have been introduced into commerce, the Administrator could require manufacturers to verify that products are meeting standards. For purposes of such verification, the Administrator could require the manufacturer to perform a selective enforcement audit of production models of the products in question and/or review the manufacturer's files for those products. Additionally, manufacturers remain subject to various penalties and administrative actions where non-complying products have been distributed.

Retaining these provisions should not burden the regulated manufacturers. Both the selective enforcement auditing and testing by the Administrator provisions are discretionary. Unlike product verification, recordkeeping, and reporting requirements, they do not require manufacturers to take actions or expend resources except where the Administrator determines the facts so warrant.

This action affects only the product verification testing and the reporting and recordkeeping requirements of the regulations. All other provisions of the existing regulations remain in effect. Regulated products remain subject to the noise emission standards, labeling, and warranty requirements of the regulations. Moreover, although EPA will not directly monitor compliance with these regulations, states, localities and individuals can still initiate actions under Section 12 of the Noise Control Act (42 U.S.C. 4911) which provides for citizens' suits to enforce noise control standards. States and localities can also continue to exercise their powers to establish in-use controls for federally regulated products, as provided in Section 6(e) of the Act.

3. Regulatory Review

EPA has determined that this final rulemaking is not a major rule under Executive Order 12201, and therefore does not require a Regulatory Impact Analysis. EPA does not anticipate any significant adverse effects on competition, employment, investment, productivity, or innovation in the regulated industries. This action will result in a significant reduction in mandatory testing, reporting and recordkeeping burdens for the regulated industries and is directly translated into cost savings to those industries.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12201.

Under the provisions of the Regulatory Flexibility Act, 5 U.S.C. Section 601 *et seq.*, I hereby certify that this final action will not have a significant economic impact on a substantial number of small entities. The final rule affects only the product verification testing and attendant recordkeeping and reporting requirements of the regulation; other portions of the regulations are unchanged. Reduced testing, reporting and recordkeeping will ease the economic burdens of the affected manufacturers and should cause no adverse economic effects.

Lists of subjects:
40 CFR Part 204

Construction industry, Noise control, Reporting requirements.

40 CFR Part 205

Labeling, Motor vehicles, Noise control, Reporting requirements.

40 CFR Part 211

Labeling, Noise control.

4. Authority

This action is being taken under the authority of Sections 6, 12, and 13 of the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978, 42 U.S.C. 4905, 4909, and 4912.

Dated: November 22, 1972.

Anne M. Gorsuch,
Administrator.

For the reasons set out in the preamble, 40 CFR Part 204 is revised and Parts 205 and 211 are amended.

Portable Air Compressors

1. The table of contents for Part 204 is revised to read as follows:

PART 204—NOISE EMISSION STANDARDS FOR CONSTRUCTION EQUIPMENT

Subpart A—General Provisions

- Sec.
- 204.1 General applicability.
- 204.2 Definitions.
- 204.3 Number and gender.
- 204.4 Inspection and monitoring.
- 204.5 Exemptions.
- 204.5-1 Testing exemption.
- 204.5-2 National security exemptions.
- 204.5-3 Export exemptions.

Subpart B—Portable Air Compressors

- 204.50 Applicability.
- 204.51 Definitions.
- 204.52 Portable air compressor noise emission standards.
- 204.54 Test procedures.
- 204.55 Requirements.
- 204.55-1 General requirements.
- 204.55-2 Compliance with Standards.
- 204.55-3 Labeling.
- 204.56 Testing by the Administrator.
- 204.57 Selective enforcement auditing.
- 204.57-1 Test request.
- 204.57-2 Test compressor sample selection.
- 204.57-3 Test compressor preparation.
- 204.57-4 Testing.
- 204.57-5 Reporting of test results.
- 204.57-6 Acceptance and rejection of batches.
- 204.57-7 Acceptance and rejection of batch sequences.
- 204.57-8 Continued testing.
- 204.57-9 Prohibition of distribution in commerce; manufacturer's remedy.
- 204.58 In-use requirements.
- 204.58-1 Warranty.

Sec.
204.50-2 Tampering.
204.50-3 Instructions for maintenance, use, and repair.
204.50 Recall of noncomplying compressors.
Authority: (42 U.S.C. 1905), 86 Stat. 1237.

§ 204.2 (Amended)

2. In § 204.2, paragraph (a) (6), is removed.

3. In § 204.4, paragraph (a) is revised to read as follows:

§ 204.4 Inspection and monitoring.

(a) Any inspection or monitoring activities conducted under this section shall be for the purpose of determining (1) whether test products are being selected and prepared for testing in accordance with the provisions of these regulations, (2) whether test product testing is being conducted in accordance with these regulations, and (3) whether products being produced for distribution into commerce comply with these regulations.

4. In § 204.4, paragraph (b)(2), add the word "and" to the end of the statement.

5. In § 204.4, paragraph (b)(3), remove the word "and" at the end of the statement.

6. In § 204.4, paragraph (b)(4) is removed.

7. In § 204.4, paragraph (c)(1)(iii) is removed.

8. In § 204.4, paragraph (d)(3) is revised to read as follows:

(d) . . .
(3) Where facilities or areas other than those covered by paragraph (d)(2) of this section are concerned, "operating hours" shall mean all times during which product manufacture or assembly is in operation or all times during which product testing or maintenance, production, or compilation of records is taking place, or any other procedure or activity related to selective enforcement audit testing or to product manufacture or assembly is being carried out.

§ 204.5-1 (Removed)

9. Section 204.5-1 is removed.

10. Section 204.5-2 is redesignated § 204.5-1 and is revised to read as follows:

§ 204.5-1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of Sections 10(a)(1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of Section 11(d) of the Act any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

§ 204.5-3 (Removed)

11. Section 204.5-3 is removed.
12. Section 204.5-4 is redesignated § 204.5-2 and is revised to read as follows:

§ 204.5-2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of Sections 10(a) (1), (2), (3), and (4) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of Section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended to be produced to conform with specifications developed by a national security agency but distributed in commerce for other uses.

(d) Any manufacturer or person subject to the liabilities of section 11(a) with respect to any product originally intended for a national security agency, but distributed in commerce for use in any State, may be excluded from the application of section 11(a) with respect to such product based upon a showing that such manufacturer:

(1) Had no knowledge of such product being distributed in commerce for use in any state; and

(2) Made reasonable efforts to ensure that such products would not be distributed in commerce for use in any State. Such reasonable efforts would include investigation, prior dealings, contract provisions, etc.

§ 204.5-5 (Redesignated as § 204.5-3)

13. Section 204.5-5 is redesignated § 204.5-3.

§ 204.5-6 (Removed)

14. Section 204.5-6 is removed.

§ 204.5-7 (Removed)

15. Section 204.5-7 is removed.

§ 204.51 (Amended)

18. In § 204.51, paragraph (f) is removed.

17. In § 204.51, paragraph (w) is revised to read as follows:

(w) "Test Compressor" means a compressor used to demonstrate

compliance with the applicable noise emissions standard.

§ 204.53 (Removed)

18. Section 204.53 is removed.

§ 204.54 (Amended)

19. In § 204.54, paragraph (a) is revised to read as follows:

(a) *General.* This section prescribes the conditions under which noise omission standard compliance Selective Enforcement Auditing or Testing by the Administrator must be conducted and the measurement procedures that must be used to measure the sound level and to calculate the average sound level of portable air compressors on which the test is conducted.

20. In § 204.54, paragraph (i), the last sentence is revised to read as follows:

(i) . . . Tests conducted by manufacturers under approved alternate procedures may be accepted by the Administrator for all purposes.

21. Section 204.55 is retitled as follows:

§ 204.55 Requirements.

§ 204.55-1 (Amended)

22. In § 204.55-1, paragraphs (a) (1) and (2) are removed; paragraphs (a) (3) and (4) are redesignated paragraphs (a) (1) and (2); and new paragraph (a)(1) is revised to read as follows:

(a) . . .
(1) Shall be labeled in accordance with the requirements of Section 204.55-4.

23. Section 204.55-2 is retitled as follows:

§ 204.55-2 Requirements.

24. In § 204.55-2, paragraph (a)(1) is revised to read as follows:

(a)(1) Prior to distribution in commerce, compressors of a specific configuration must verify such configurations in accordance with this subpart.

25. In § 204.55-2, paragraph (a)(2) is removed and reserved.

26. In § 204.55-2, paragraph (b) is revised to read as follows:

(b) The requirements for purposes of Testing by the Administrator and Selective Enforcement Auditing consist of:

(F) Testing in accordance with § 204.54 of a compressor selected in accordance with § 204.57-2 and

(2) Compliance of the test compressor with the applicable standards when tested in accordance with § 204.54.

27. In § 204.55-2, paragraph (c)(1)(III) is revised to read as follows:

(c) . . .
(F) . . .

(III) Testing in accordance with § 204.54 selected in accordance with § 204.57-2 which must be a compressor of the configuration which is identified pursuant to paragraph (c)(1)(II) of this section as having the highest sound level (estimated or actual) within the category.

28. In § 204.55-2, paragraph (c)(1)(iv), remove the word "and" at the end of the statement.

29. In § 204.55-2, paragraph (c)(1)(v) is removed.

30. In § 204.55-2, paragraph (c)(2) is revised to read as follows:

(c) . . .

(2) Where the requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within a category are considered represented by the tested compressor.

31. In § 204.55-2, paragraph (c)(3) is revised to read as follows:

(c) . . .

(3) Where the manufacturer tests a compressor configuration which has not been determined as having the highest sound level of a category, but all other requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within that category which are determined to have sound levels no greater than the tested compressor are considered to be represented by the tested compressor; however, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of paragraph (b)(1) and/or (c)(1) of this section any configurations in the subject category which have a higher sound level than the compressor configuration tested.

32. In § 204.55-2, paragraph (d) is revised to read as follows:

(d) A manufacturer may elect for purposes of Testing by the Administrator and Selective

Enforcement Auditing to use representative testing, pursuant to paragraph (c) of this section, all or part of his product line.

33. In § 204.55-2, paragraph (c)(1) and (2) are revised to read as follows:

(a) . . .

(1) In the case of representative testing, a new test compressor from another configuration must be selected according to the requirements of paragraph (c) of this section in order to verify the configurations represented by the non-compliant compressor.

(2) Modify the test compressor and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production compressors of the same configuration in the same manner as the test compressor before distribution into commerce.

34. In § 204.55-2, paragraph (f) is removed.

§§ 204.55-4 through 204.55-7. [Removed]

35. Sections 204.55-4 through 204.55-7 are removed.

§ 204.55-8 [Redesignated as § 204.55-4]

36. Section 204.55-8 is redesignated § 204.55-4.

§§ 204.55-9 through 204.55-11 [Removed]

37. Sections 204.55-9 through 204.55-11 are removed.

38. Section 204.57-3 is revised to read as follows:

§ 204.57-3 Test compressor preparation.

(a) Prior to the official test, the test compressor selected in accordance with § 204.57-2 shall not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparations, modifications and/or tests are part of the manufacturer's prescribed manufacturing and inspection procedures and are documented in the manufacturer's internal compressor assembly and inspection procedures or unless such adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator. The manufacturer may perform adjustments, preparations, modifications and/or tests normally performed by a dealer to prepare the compressor for delivery to a customer or the adjustments, preparations, modifications and/or tests normally performed at the port-of-entry by the manufacturer to prepare the compressor for delivery to a dealer or customer.

(b) Equipment of fixtures necessary to conduct the test may be installed on the compressor. *Provided*, That such

equipment of fixtures shall have no effect on the noise emissions of the compressor, as determined by the appropriate measurement methodology.

(c) In the event of compressor malfunction (i.e., failure to start, misfiring cylinder, etc.), the manufacturer may perform the maintenance necessary to enable the compressor to operate in a normal manner.

(d) No quality control, testing, assembly, or selection procedures shall be used on the completed test compressor or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other compressors of that category which will be distributed in commerce, unless such procedures are required or permitted under this subpart or are approved in advance by the Administrator.

39. In § 204.57-4, paragraph (a)(1) is revised to read as follows:

§ 204.57-4 Prohibition of distribution in commerce; manufacturer's remedy.

(a) . . .

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the compressor, describes the problem, and describes the proposed quality control and/or quality assurance remedies to be taken by the manufacturer to correct the problem or follows the requirements for an engineering change. Such requirements include the following:

(i) Any change to a configuration with respect to any of the parameters stated in § 204.55-3 shall constitute the addition of a new and separate configuration or category to the manufacturer's product line.

(ii) When a manufacturer introduces a new category or configuration to his product line, he shall proceed in accordance with § 204.55-2.

(iii) If the configuration to be added can be grouped within a verified category and the new configuration is estimated to have a lower sound level than a previously verified configuration with the same category, the configuration shall be considered verified.

§ 204.57-1 [Amended]

40-41. In § 204.57-1, paragraph (b) is removed and reserved.

§ 204.58-1 [Amended]

42. In § 204.58-1, paragraph (a) is revised to read as follows:

(a) The portable air compressor manufacturer shall include in the

owner's manual or in other information supplied to the ultimate purchaser, the following statement.

43. In § 204.58-1, paragraphs (b), (c), and (d) are removed:

§ 204.58-2 (Amended)

44. In § 204.58-2, paragraph (a) is revised; paragraphs (b), (c), and (g) are removed; paragraphs (d) and (e) are revised; and paragraphs (f), (h), and (i) are redesignated paragraphs (b), (c), and (d) respectively.

The amended § 204.58-2 reads as follows:

§ 204.58-2 Tampering.

(a) For each configuration of air compressors covered by this part, the manufacturer shall develop a list of those acts which, in his judgment, might be done to the air compressor in use and which would constitute the removal or rendering inoperative of noise control devices or elements of design of the compressor.

(b) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

Tampering With Noise Control System Prohibited

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any persons, other than for purposes of maintenance, repair, or replacement, of any devices or element of design incorporated into any new compressor for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use; or

(2) the use of the compressor after such device or element of design has been removed or rendered inoperative by any person.

(2) The statement:

Among those acts included in the prohibition against tampering are the acts listed below.

Immediately following this statement, the manufacturer shall include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a proscribed act has been committed and it can be shown that such act resulted in no increase in the sound level of the compressor or that the compressor still meets the noise emission standard of § 204.52, such act will not constitute tampering.

§ 204.58-3 (Amended)

45. In § 204.58-3, paragraphs (c), (d), and (e) are removed.

Medium and Heavy Trucks

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

1. The table of contents for Part 205, Subparts A and B, are revised to read as follows:

Subpart A—General Provisions

- Sec.
- 205.1 General applicability.
- 205.2 Definitions.
- 205.3 Number and gender.
- 205.4 Inspection and Monitoring.
- 205.5 Exemptions.
- 205.5-1 Testing exemption.
- 205.5-2 National security exemptions.
- 205.5-3 Export exemptions.

Subpart B—Medium and Heavy Trucks

- 205.50 Applicability.
- 205.51 Definitions.
- 205.52 Vehicle noise emission standards.
- 205.54 Test procedures.
- 205.54-1 Low speed sound emission test procedures.
- 205.54-2 Sound data acquisition system.
- 205.55 Requirements.
- 205.55-1 General requirements.
- 205.55-2 Compliance with standards.
- 205.55-3 Configuration identification.
- 205.55-4 Labeling-compliance.
- 205.55-5 Labeling-exterior.
- 205.55-6 Labeling.
- 205.56 Testing by the administrator.
- 205.57 Selective enforcement auditing requirements.
- 205.57-1 Test request.
- 205.57-2 Test vehicle sample selection.
- 205.57-3 Test vehicle preparation.
- 205.57-4 Testing procedures.
- 205.57-5 Reporting of the test results.
- 205.57-6 Acceptance and rejection of batches.
- 205.57-7 Acceptance and rejection of batch sequence.
- 205.57-8 Continued testing.
- 205.57-9 Prohibition on distribution in commerce; manufacturer's remedy.
- 205.58 In-use requirements.
- 205.58-1 Warranty.
- 205.58-2 Tampering.
- 205.58-3 Instruction for maintenance, use and repair.
- 205.59 Recall of noncomplying vehicles.
- Appendix I

Authority: Sec. b, 10, 11, 13, Pub. L. 92-574, 86 Stat 1234 (42 U.S.C. 4905, 4909, 4910, 4912).

§ 205.2 (Amended)

2. In § 205.2, paragraph (a)(8) is removed.

§ 205.4 (Amended)

3. In § 205.4, paragraph (a) is revised to read as follows:

(a) Any inspection or monitoring activities conducted under this section shall be for the purpose of determining (1) whether test products are being selected and prepared for testing in accordance with the provisions of these

regulations, (2) whether test product testing is being conducted in accordance with these regulations, and (3) whether products being produced for distribution into commerce comply with these regulations.

4. In § 205.4, paragraph (b)(2) add the word "and" at the end of the statement.

5. In § 205.4, paragraph (b)(3) remove the word "and" and the end of the statement.

6. In § 205.4, paragraph (b)(4) is removed.

7. In § 205.4, paragraph (c)(1)(iii) is removed, and paragraph (c)(1)(iv) is redesignated as paragraph (c)(1)(iii). Paragraph (c)(1)(iv) is reserved.

8. In § 205.4, paragraph (d)(3) is revised to read as follows:

(d)

(3) Where facilities or areas other than those covered by paragraph (d)(2) of this section are concerned, "operating hours" shall mean all times during which product manufacture or assembly is in operation or all times during which product testing and maintenance is taking place and/or production or compilation of records is taking place, or any other procedure or activity related to selective enforcement audit testing or product manufacture or assembly being carried out in a facility.

§ 205.5-1 (Removed)

9. Section 205.5-1 is removed.

§ 205.5-2 (Redesignated as § 205.5-1)

10. Section 205.5-2 is redesignated § 205.5-1 and revised to read as follows:

§ 205.5-1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a) (1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act, any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

§ 205.5-2 (Removed)

11. Section 205.5-2 is removed.

§ 205.5-4 (Redesignated as § 205.5-2)

12. Section 205.5-4 is redesignated § 205.5-2 and revised to read as follows:

§ 205.5-2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a) (1), (2), (3), and (5) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended to be produced to conform with specifications developed by a national security agency, but distributed in commerce for other uses.

(d) Any manufacturer or person subject to the liabilities of section 11(a) with respect to any product originally intended for a national security agency, but distributed in commerce for use in any State, may be excluded from the application of section 11(a) with respect to such product based upon a showing that such manufacturer:

(1) Had no knowledge of such product being distributed in commerce for use in any State; and

(2) Made reasonable effort to ensure that such products would not be distributed in commerce for use in any State. Such reasonable efforts would include investigation, prior dealings, contract provisions, etc.

§ 205.5-5 [Redesignated as § 205.5-3]

13. Section 205.5-5 is redesignated § 205.5-3.

§ 205.5-6 [Removed]

14. Section 205.5-6 is removed.

§ 205.5-7 [Removed]

15. Section 205.5-7 is removed.

§ 205.51 [Amended]

16. In § 205.51, paragraph (a)(20) is removed and reserved.

17. In § 205.51, paragraph (a)(20) is revised to read as follows:

(a) * * *

(20) "Test vehicle" means a vehicle selected and used to demonstrate compliance with the applicable noise emission standards.

§ 205.53 [Removed]

18. Section 205.53 is removed.

19. Section 205.54 is revised to read as follows:

§ 205.54 Test procedures.

The procedures described in this and subsequent sections will be the test program to determine the conformity of vehicles with the standards set forth in § 205.52 for the purposes of Selective

Enforcement Auditing and Testing by the Administrator.

§ 205.54-2 [Amended]

20. In § 205.54-2, paragraph (b), the last sentence is removed.

21. Section 205.55 is retitled as follows:

§ 205.55 Requirements.**§ 205.55-1 [Amended]**

22. In § 205.55-1, paragraph (a)(1) and (2) are removed; paragraphs (a) (3) and (4) are redesignated paragraphs (a) (1) and (2); and new paragraph (a) (1) is revised to read as follows:

(a) * * *

(1) Shall be labeled in accordance with the requirements of § 205.55-5 of this subpart.

23. In § 205.55-1, paragraph (c) is revised to read as follows:

(c) Subsequent manufacturers of a new product which conforms to the definition of vehicle in these regulations when received by them from a prior manufacturer, need not fulfill the requirements of paragraph (a)(1) where such requirements have already been complied with by a prior manufacturer.

24. Section 205.55-2, is retitled to read as follows:

§ 205.55-2 Compliance with standards.

25. In § 205.55-2, paragraph (a)(1) is revised to read as follows:

(a) (1) Prior to distribution in commerce of vehicles of a specific configuration, the first manufacturers of such vehicles must verify such configurations in accordance with the requirements of this subpart.

26. In § 205.55-2, paragraph (a)(2) is removed and reserved.

27. In § 205.55-2, paragraph (b) is revised to read as follows:

(b) The requirements for purposes of testing by the Administrator and selective enforcement auditing with regard to each vehicle configuration consist of:

(1) Testing in accordance with § 205.54 of a vehicle selected in accordance with § 205.57-2, and

(2) Compliance of the test vehicle with the applicable standard when tested in accordance with § 205.54.

28. In § 205.55-2, paragraph (c)(1)(iii) is revised to read as follows:

(c) * * *

(1) * * *

(iii) Testing in accordance with § 205.54 of a vehicle selected in accordance with § 205.57-2 which must

be a vehicle of the configuration which is identified pursuant to paragraph (c)(ii) of this paragraph as having the highest sound pressure level (estimated or actual) within the category.

29. In § 205.55-2, paragraph (c)(1)(iii) add "and" at the end of the statement.

30. In § 205.55-2, paragraph (c)(1)(iv) remove "and" at the end of the statement.

31. In § 205.55-2, paragraph (c)(1)(v) is removed.

32. In § 205.55-2, paragraph (c)(2) is revised to read as follows:

(c) * * *

(2) Where the requirements of paragraph (c)(1) are complied with, all those configurations contained within a category are considered represented by the tested vehicle.

33. In § 205.55-2, paragraph (c)(3) is revised to read as follows:

(c) * * *

(3) Where the manufacturer tests a vehicle configuration which has not been determined as having the highest sound pressure level of a category, but all other requirements of paragraph (c)(1) of this section are complied with all those configurations contained within that category which are determined to have sound pressure levels no greater than the tested vehicle are considered to be represented by the tested vehicle, however, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of (b)(1) and/or (c)(1) of this section any configurations in the subject category which have a higher sound pressure level than the vehicle configuration tested.

34. In § 205.55-2, paragraph (d) is removed.

35. In § 205.55-2, paragraphs (e)(1) and (e)(2) are revised to read as follows:

(e) * * *

(1) In the case of representative testing a new test vehicle from another configuration must be selected according to the requirements of paragraph (c) of this section, in order to verify the configurations represented by the non-compliant vehicle.

(2) Modify the test vehicle and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production vehicles of the same configuration in the same

manner as the test vehicle before distribution into commerce.

36. In § 205.55-2, paragraph (f) is removed.

§§ 205.55-4 through 205.55-10 (Removed)
37. Sections 205.55-4 through 205.55-10 are removed.

§ 205.55-11 (Redesignated as § 205.55-4)
38. Section 205.55-11 is redesignated § 205.55-4.

§ 205.55-12 (Redesignated as § 205.55-4)
39. Section 205.55-12 is redesignated § 205.55-5.

§ 205.56 (Amended)
40. In § 205.56 remove and reserve subparagraph (c)(1)(i) and remove (c)(1)(v).

§ 205.56 (Amended)
41. In § 205.56 remove the word "and" at the end of paragraph (c)(1)(iv).
42. In § 205.57-2, paragraph (a) is revised to read as follows:

§ 205.57-2 Test vehicle sample selection.
(a) Vehicles comprising the batch sample which are required to be tested pursuant to a test request in accordance with this subpart will be selected in the manner specified in the test request from a batch of vehicles of the category or configuration specified in the test request. If the test request specifies that the vehicles comprising the batch sample must be selected randomly, the random selection will be achieved by sequentially numbering all of the vehicles in the batch and then using a table of random numbers to select the number of vehicles as specified in (c) of this section based on the batch size designated by the Administrator in the test request. An alternative random selection plan may be used by a manufacturer: *Provided*, That such a plan is approved by the Administrator. If the test request does not specify that test vehicles must be randomly selected, the manufacturer shall select test vehicles consecutively.

(1) Should a situation arise in which the configuration to be tested consists of only vehicles with automatic transmissions, they shall be tested in accordance with § 205.54-1(c)(2).

(2) If the configuration to be tested consists of both automatic transmission and standard transmission vehicles, the test vehicle shall be a standard transmission vehicle unless the manufacturer has reason to believe that the automatic transmission vehicle emits a greater sound level.

43. Section 205.57-3 is revised to read as follows:

§ 205.57-3 Test vehicle preparation.

(a) Prior to the official test, the test vehicle selected in accordance with § 205.57-2 shall not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparation, modification and/or tests are part of the manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal vehicle assembly and inspection procedures or unless such adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator. The manufacturer may perform adjustments, preparations, modification and/or tests normally performed at the port of entry by the manufacturer to prepare the vehicle for delivery to a dealer or customer.

(b) Equipment or fixtures necessary to conduct the test may be installed on the vehicle: *Provided*, That such equipment or fixtures shall have no effect on the noise emissions of the vehicle, as determined by measurement methodology.

(c) In the event of vehicle malfunction (i.e., failure to start, misfiring cylinder, etc.) the manufacturer may perform the maintenance that is necessary to enable the vehicle to operate in a normal manner.

(d) No quality control, testing, assembly or selection procedures shall be used on the completed vehicle or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other vehicles of the category which will be distributed in commerce, unless such procedures are required or permitted under this subpart.

§ 205.57-9 (Amended)

44. In § 205.57-9, paragraph (a)(1) is revised to read as follows:

(a)
(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the problem and describes the proposed quality control and/or quality assurance remedies to be taken by the manufacturer to correct the problem or follows the requirements for an engineering change. Such requirements include the following:
(i) Any change to a configuration with respect to any of the parameters stated in § 205.55-3 shall constitute the addition of a new and separate configuration or category to the manufacturer's product line.

(ii) When a manufacturer introduces a new category or configuration to his

product line, he shall proceed in accordance with § 205.55-2.

(iii) If the configuration to be added can be grouped within a verified category and the new configuration is estimated to have a lower sound pressure level than a previously verified configuration within the same category, the configuration shall be considered verified.

§ 205.58-1 (Amended)

45. In § 205.58-1, paragraph (a) is revised to read as follows:

(a) The vehicle manufacturer shall include the owner's manual or in other information supplied to the ultimate purchaser the following statement:

Noise Emissions Warranty

The manufacturer warrants to the first person who purchases this vehicle for purposes other than resale and to such subsequent purchaser that the vehicle was designed, built and equipped to conform at the time of sale to such first purchaser with all applicable U.S. EPA noise control regulations.

This warranty is not limited to any particular part, component or system of the vehicle. Defects in the design, assembly, or in any part, component, or system of the vehicle which, at the time of sale to such first purchaser, caused noise emission levels to exceed Federal standards are covered by this warranty for the life of the vehicle.

46. In § 205.58-1, paragraphs (b), (c), and (d) are removed.

47. In § 205.58-2, paragraph (a) is revised; paragraphs (b), (c), and (g) are removed; paragraphs (d) and (e) are revised and redesignated as paragraphs (b) and (c), respectively; paragraph (f) is redesignated as paragraph (d). The amended portions read as follows:

§ 205.58-2 Tampering.

(a) For each configuration of vehicles covered by this part, the manufacturer shall develop a list of those acts which, in his judgment, might be done to the vehicle in use and which would constitute the removal or rendering inoperative of noise control devices or elements of design of the vehicle.

(b) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

Tampering With Noise Control System Prohibited

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new vehicle for the purpose of noise

control prior to its sale or delivery to the ultimate purchaser or while it is in use; or (2) the use of the vehicle after such device or element of design has been removed or rendered inoperative by any person.

(2) The statement:

Among those acts presumed to constitute tampering are the acts listed below.

Immediately following this statement, the manufacturer shall include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a prescribed act has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.52, such act will not constitute tampering.

(d)
 § 205.56-3 [Amended]

40. In § 205.56-3, paragraphs (c), (d), and (e) are removed.

Product Noise Labeling

PART 211—PRODUCT NOISE LABELING

1. The table of contents for Part 211, subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.	
211.101	Applicability.
211.102	Definitions.
211.103	Number and gender.
211.104	Label content.
211.105	Label format.
211.106	Graphical requirements.
211.107	Label type and location.
211.108	Sample label.
211.109	Inspection and monitoring.
211.110	Exemptions.
211.110-1	Testing exemption.
211.110-2	National security exemptions.
211.110-3	Export exemptions.
211.111	Testing by the Administrator.

Authority: Sec. 5, Noise Control Act of 1972 (42 U.S.C. 4907), and other authority as specified.

§ 212.109 [Amended]

2. In § 212.109, paragraph (a)(1), is removed and paragraphs (2), (3) and (4) are redesignated paragraphs (a)(1), (2), and (3).

3. In § 212.109, paragraph (b)(4) is removed.

4. In § 212.109, paragraph (d) is revised to read as follows:

(d)

(3) Where other facilities or areas are concerned, "operating hours" means all times during which products are being

manufactured or assembled; or all times during which products are being tested or maintained; or records are being compiled; or when any other procedure or activity related to labeling, selective enforcement auditing, or product manufacture or assembly being carried out.

5. Section 211.110-1 is revised to read as follows:

§ 211.110-1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the produce itself, shall be exempt from the prohibitions of sections 10(a), (1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act, any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

6. Section 211.110-2 is revised to read as follows:

§ 211.110-2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of sections 10(a), (1), (2), (3), and (5) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 12(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended for a national security agency, but distributed in commerce for other uses.

§ 211.110-3 [Amended]

7. In § 211.110-3, paragraph (d) is removed.

§ 211.110-4 [Removed]

8. Section 211.110-4 is removed.

§ 211.110-5 [Removed]

9. Section 211.110-5 is removed.

§ 211.111 [Amended]

10. In § 211.111, paragraph (c)(1)(i), is removed and reserved.

Hearing Protective Devices

PART 211—PRODUCT NOISE LABELING

11. 40 CFR Part 211 is amended by revising the table of contents for Subpart B to read as follows:

Subpart B—Hearing Protective Devices

Sec.	
211.201	Applicability.
211.202	Effective date.
211.203	Definitions.
211.204	Hearing protector labeling requirements.
211.204-1	Information content of primary label.
211.204-2	Primary label size, print and color.
211.204-3	Label location and type.
211.204-4	Supporting information.
211.205	Special claims.
211.206	Methods for measurement of sound attenuation.
211.206-1	Real ear method.
211.206-2 through 211.206-10	Alternative test methods [Reserved]
211.207	Computation of the noise reduction rating (NRR).
211.208	Export provisions.
211.210	Requirements.
211.210-1	General requirements.
211.210-2	Labeling requirements.
211.211	Compliance with labeling requirement.
211.212	Compliance audit testing.
211.212-1	Test request.
211.212-2	Test hearing protector selection.
211.212-3	Test hearing protector preparation.
211.212-4	Testing procedures.
211.212-5	Determination of compliance.
211.212-6	Continued compliance testing.
211.212-7	Relabeling requirements.
211.213	Remedial orders for violations of these regulations.
211.214	Removal of label.

APPENDIX A—Compliance Audit Testing Report.

Authority: Sec. 5, Pub. L. 92-574, 86 Stat. 1241 (42 U.S.C. 4907), and additional authority as specified.

12. § 211.205, the heading is revised and paragraphs (b) and (c) are removed.

§ 211.205 Special claims.

§ 211.209 [Removed]

13. Section 211.209 is removed.

14. Section 211.210 is retitled to read as follows:

§ 211.210 Requirements.

§ 211.210-1 [Amended]

15. In § 211.210-1, paragraph (a) (1) and (2) are removed; and paragraphs (a) (3) and (4) are redesignated paragraphs (a) (1) and (2).

16. Section 211.210-2 is retitled to read as follows:

§ 211.210-2 Labeling requirements.

17. In § 211.210-2, paragraph (a)(1) is revised to read as follows:

(a)(1) A manufacturer responsible for labeling must satisfy the requirements of this subpart for a category of hearing protectors before distributing that category of hearing protectors in commerce.

18. In § 211.210-2, paragraph (a)(2) is revised to read as follows:

(a) . . .
 (2) A manufacturer may apply to the Administrator for an extension of time to comply with the labeling requirements for a category of protectors before he distributes any protectors in commerce. The Administrator may grant the manufacturer an extension of up to 20 days from the date of distribution. The manufacturer must provide reasonable assurance that the protectors equal or exceed their mean attenuation values, and that labeling requirements will be satisfied before the extension expires. Requests for extension should go to the Administrator, U.S. Environment Protection Agency, Washington, D.C. 20460. The Administrator must respond to a request within 2 business days. Responses may be either written or oral.

19. In § 211.210-2, paragraph (a)(3) is revised to read as follows:

(a) . . .
 (3) A manufacturer, receiving hearing protectors through the chain of distribution that were labeled by a previous manufacturer, may use that previous manufacturer's data when labeling the protectors for ultimate sale or use, but is responsible for the accuracy of the information on the label. The manufacturer may elect to retest the protectors.

20. In § 211.210-2, paragraph (b) is revised to read as follows:

(b) Labeling requirements regarding each hearing protector category in a manufacturer's product line consist of:

(1) Testing hearing protectors according to § 211.208 and the hearing protectors must have been assembled by the manufacturer's normal production process; and it must have been intended for distribution in commerce.

21. In § 211.210-2, paragraph (d) is removed.

§ § 211.210-3 through 211.210-7 [Removed]

22. Sections 211.210-3 through 211.210-7 are removed.

23. Section 211.211 is revised to read as follows:

Section 211.211 Compliance with labeling requirement.

(a) All hearing protective devices manufactured after the effective date of this regulation, and meeting the applicability requirements of § 211.201, must be labeled according to this subpart, and must comply with the Labeled Values of mean attenuation.

(b) A manufacturer must take into account both product variability and test-to-test variability when labeling his devices in order to meet the requirements of paragraph (a) of this section. A specific category is considered when the attenuation value at the tested one-third octave band is equal to or greater than the Labeled Value, or mean attenuation value, stated in the supporting information required by § 211.204-4, for that tested frequency. The attenuation value must be determined according to the test procedures of § 211.208. The Noise Reduction Rating for the label must be calculated using the Labeled Values of mean attenuation that will be included in the supporting information required by § 211.204-4.

§ 211.212-1 [Amended]

24. In § 211.212-1, paragraph (c) (4), the words enclosed by the parenthesis are removed.

25. Section 211.212-3 is revised to read as follows:

§ 211.212-3 Test hearing protector preparation.

The manufacturer must select the test hearing protector according to § 211.212-2 before the official test, and must comply with the test protector preparation requirements described in this subpart:

(a) A test hearing protector selected according to § 211.212-2 must not be tested, modified, or adjusted in any manner before the official test unless the adjustments, modifications and/or tests are part of the manufacturer's prescribed manufacturing and inspection procedures.

(b) Quality controls, testing, assembly or selection procedures must not be, used on the completed protector or any portion of the protector, including parts, that will not normally be used during the production and assembly of all other protectors of that category to be distributed in commerce.

26. In § 211.212-6, paragraph (a) is revised to read as follows:

§ 211.212-6 Determination of compliance.

(a) A category will be in compliance with these requirements if the results of the test conducted under the test request show that:

(1) The mean attenuation value, at each one-third octave band center frequency as determined from the Compliance Audit Test values plus 3 dB(A), is equal to or greater than the mean attenuation value at the same one-third octave band as stated in the Supporting Information required by § 211.204-4; and

(2) The Noise Reduction Rating, when calculated from the mean attenuation values determined by Compliance Audit Testing, equals or exceeds the Noise Reduction Rating as stated on the label required by § 211.204.

Appendix A [Removed]

27. Appendix A is removed.

Appendix B [Redesignated as Appendix A]

28. Appendix B is redesignated Appendix A.

Compactors

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

1. The table of contents for Part 205, Subpart F is revised to read as follows:
 Subpart F—Truck-Mounted Solid Waste Compactors.

Sec.	
205.200	Applicability.
205.201	Definitions.
205.202	Noise emission standards.
205.204	Test procedures.
205.205	Requirements.
205.205-1	General requirements.
205.205-2	Compliance with standards.
205.205-3	Configuration identification.
205.205-4	Labeling.
205.206	Testing by the Administrator.
205.207	Selective enforcement auditing requirements.
205.207-1	Test request.
205.207-2	Test sample selection.
205.207-4	Testing procedures.
205.207-5	Reporting of the test results.
205.207-6	Passing or failing under SEA.
205.207-7	Continued testing.
205.207-8	Prohibition of distribution in commerce; manufacturer's remedy.
205.208	In-use requirements.
205.208-1	[Reserved].
205.208-2	Tampering.
205.208-3	Instructions for maintenance, use and repair.
205.208-4	Noise Level Degradation Factor (NLDF) and retention of durability data.
205.209	Recall of non-complying compactors.
	Appendix I—Sample Tables.

Authority: Sec. 6, Noise Control Act (42 U.S.C. 4906) (except where otherwise specified).

§ 205.207 (Amended)

2. In § 205.207, paragraph (a) (13), is removed and reserved.

3. In § 205.207, paragraph (a)(5), is revised to read as follows:

(15) "Test compactor" means a compactor in a test sample.

4. In § 205.202, paragraph (b), the second sentence is revised to read as follows:

§ 205.202 Noise emission standards.

(b) * * * At the time of selective enforcement auditing (SEA) testing prescribed in § 205.207, new truck-mounted solid waste compactors must comply with the standards set forth in paragraph (a) of this section minus the noise level degradation factor (NLDF) developed in accordance with § 205.208-4.

§ 205.203 (Removed)

5. Section 205.203 is removed.

§ 205.204 (Amended)

6. Section 205.204, paragraph (a) is revised to read as follows:

(a) *General.* This section prescribes the conditions under which noise emission standard compliance testing for selective enforcement auditing or testing by the Administrator must be conducted and the measurement procedures that must be used to determine the maximum noise level of truck-mounted solid waste compactors.

7. In § 205.204, paragraph (g), the last sentence is revised to read as follows:

(g) * * * Tests conducted by manufacturers under approved alternate procedures may be accepted by the Administrator for all purposes, including, but not limited to, selective enforcement audit testing and testing by the Administrator.

8. Section 205.205 is retitled to read as follows:

§ 205.205 Requirements.

§ 205.205-1 (Amended)

9. In § 205.205-1, paragraphs (a)(1) and (2) are removed; paragraph (a)(3) and (4) are redesignated paragraphs (a)(1) and (2); and paragraph (1) is revised to read as follows:

(a) * * *

(1) Shall label each compactor in accordance with the requirements of § 205.205-4 of this subpart; and

10. In § 205.205-1, paragraph (c) is revised to read as follows:

(c) A subsequent manufacturer of a truck-mounted solid waste compactor need not fulfill the requirements of paragraph (a)(1) of this section if the compactor, when received by the manufacturer, fits the definition of a new truck-mounted solid waste compactor in the regulation, and the prior manufacturer had already complied with these requirements.

In § 205.205-1, paragraph (d) is removed.

12. In § 205.205-2 is retitled to read as follows:

§ 205.205-2 Compliance with standards.

13. In § 205.205-2, paragraph (a), (2) and (3) are removed.

14. In § 205.205-2, paragraph (b) is revised to read as follows:

(b) The requirements for purposes of Testing by the Administrator and Selective Enforcement Auditing with regard to each compactor configuration shall consist of:

(1) Testing in accordance with § 205.204 of a compactor selected in accordance with § 205.204-2; and

(2) Compliance of the test compactor with a noise level such that the arithmetic sum of the Noise Level Degradation Factor (NLDF, determined in accordance with § 205.208-4 of this Subpart) and that noise level does not exceed the applicable standards, when tested in accordance with § 205.204.

15. In § 205.205-2, paragraph (c), paragraph (1) (iii) is revised to read as follows:

(C)(1) * * *
(iii) Testing in accordance with § 205.204 of a compactor, selected in accordance with § 205.207-2 of the configuration identified pursuant to paragraph (c)(1)(ii) of this section as having the highest noise level (estimate or actual) within category:

18. In § 205.205-2, paragraph (c)(1)(v) is removed.

17. In § 205.205-2, paragraph (c)(2) is revised to read as follows:

(c) * * *
(2) If there has been compliance with the requirements of paragraph

(c)(1) of this section, all those configurations within a category are considered to be represented by the tested compactor, and therefore considered to be verified.

18. In § 205.205-2, paragraph (c)(3) is revised to read as follows:

(c) * * *
(3) If there has been compliance with all other requirements of paragraph (c)(1) of this section, except that the manufacturer tests a configuration which does not have the highest noise level in a category (as identified in (c)(1)(iii)), all those configurations in the category which have noise levels no greater than that of the tested compactor are considered to be verified. However, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of (b)(1) or (c)(1) of this section any configurations in the category which have a higher noise level than that of the compactor configuration tested.

19. In § 205.205-2, paragraph (d) is revised to read as follows:

(d) A manufacturer may elect to verify all or part of his product line using representative testing pursuant to paragraph (c) of this section.

20. In § 205.205-2, paragraph (e)(1) and (2) are revised to read as follows:

(e) * * *
(1) In the case of representative testing, a new test compactor from another configuration must be selected and verified according to the requirements of paragraph (c) of this section, in order to verify the category represented by the compactor that does not comply; or

(2) Modification of the test compactor and demonstration by testing that it meets applicable standards. The manufacturer shall modify all production compactors of the same configuration in the same manner as the test compactor before distribution into commerce.

21. In Section 205.205-2, paragraph (f) is removed.

§ 205.205-4 through 205.205-10 (Removed)

22. Sections 205.205-4 through § 205.205.10 are removed.

§ 205.205-11 [Redesignated as § 205.203.4].

23. Section 205.205-11 is redesignated as § 205.205-1 and paragraph (a)(3) is revised to read as follows:

§ 205.205-4 Labeling—compliance.

(a) * * *
 (3) The compactor manufacturer shall affix the label in such a manner that it cannot be removed without destroying or defacing the label. He shall not affix the label to any piece of equipment that is easily detached from the compactor.

§ 205.206 [Amended]

24. In § 205.206 paragraph (c)(1)(i) is removed and reserved and paragraph (c)(ii) is revised to read as follows:

(c)(1) * * *
 (ii) Testing of a reasonable number of compactors for purposes of selective enforcement auditing under § 205.207.

25. In § 205.206 paragraph (c)(1)(v) is revised to read as follows:

(c)(1) * * *
 (v) Testing of up to 50 percent of the manufacturer's production test products to be tested during a year, if the Administrator determines it is necessary to test these vehicles to assure that a manufacturer has acted or is acting in compliance with the Act.

26. In § 205.207-2, paragraph (c) is revised to read as follows:

§ 205.207-2 Test sample selection.

(c) The compactors of the category configuration or subgroup selected for testing shall have been assembled by the manufacturer for distribution in commerce using the manufacturer's normal production process.

27. In § 205.207-3 is revised to read as follows:

§ 205.207-3 Test sample preparation.

(a) Before the official test, the test compactor selected must not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparation, modification or tests are part of the manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal compactor assembly and inspection procedures, or unless such adjustments or tests are required or permitted under this subpart or are approved in advance by the Administrator. For purposes of this section prescribed manufacturing and inspection procedures include quality

control testing and assembly procedures normally performed by the manufacturer on like products during production, if the resulting testing is not biased by this procedure. In the case of impacted products, the manufacturer may perform adjustments, preparation, modifications or tests normally performed at the port of entry by the manufacturer, to prepare the compactor for delivery to a dealer or customer.

(b) Equipment or fixtures necessary to conduct the test may be installed on the compactor, if such equipment or fixtures have no effect on the noise emissions of the compactor, as determined by the measurement methodology.

(c) In the event of a compactor malfunction (e.g., failure to start) the manufacturer may perform the maintenance that is necessary to enable the compactor to operate in a normal manner.

(d) No quality control, quality assurance testing, assembly or selection procedures may be used on the test compactor or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other compactors of the category which will be distributed in commerce, unless such procedures are required or permitted under this subpart, or are approved in advance by the Administrator.

28. In § 205.207-5, the address in paragraph (b) is revised to read as follows:

§ 205.207-5 Reporting of the test results.

(b) * * *
 Administrator, U.S. Environmental Protection Agency, Washington, D.C. 20460.

29. In § 205.207-8, paragraph (a)(1) is revised to read as follows:

§ 205.207-8 Prohibition of distribution in commerce, manufacturer's remedy.

(a) * * *
 (1) Submits a written report to the Administrator which identifies the reason for the non-compliance of the compactors, described the problem and describes the proposed quality control or quality assurance remedies to be taken by the manufacturer to correct the problem.

30. In § 205.208-2, paragraph (1) is revised; paragraphs (b) and (c) are removed; paragraphs (d) and (e) are revised and redesignated paragraphs (b) and (c); paragraph (h) is removed; and paragraphs (f) and (g) are redesignated (d) and (e), respectively. The revised portions of § 205.208-2 read as follows:

§ 205.208-2 Tampering.

(a) For each configuration of compactor covered by this part, the manufacturer shall develop a list of those acts which, in his judgment, might be done to the compactor in use and which would constitute the removal or rendering inoperative of noise control devices or elements of design of the compactor.

(b) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

Tampering With Noise Control System Prohibited

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new compactor for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use; or (2) the use of the compactor after such device or element of design has been removed or rendered inoperative by any person.

(2) The statement: Among those acts presumed to constitute tampering are the acts listed below.

Immediately following this statement, the manufacturer shall include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a prescribed act has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.202, such act will not constitute tampering.

(d) Manufacturers who only assemble compactors need not fulfill the requirements of paragraphs (a) and (b) of this section. Such manufacturers shall provide ultimate purchasers of their compactors with the tampering list developed by the compactor body manufacturer under paragraph (a) of this section for that particular compactor body and truck chassis combination.

31. In § 205.208-3, paragraphs (c), (d), and (f) are removed; paragraph (e) is redesignated (c) and is revised to read as follows:

§ 205.208-3 Instructions for maintenance, use and repair.

(c) Manufacturers who only assemble compactors are not required to fulfill the requirements of paragraphs (a) and (b) of this section. Such manufacturers shall

provide the maintenance instructions and log book developed by the compactor body manufacturer for that particular compactor body and chassis combination.

Motorcycles

PART 205—TRANSPORTATION EQUIPMENT NOISE

1. The table of contents for Part 205, Subpart D and E is revised to read as follows:

Subpart C—Motorcycles

- Sec.
- 205.150 Applicability.
- 205.151 Definitions.
- 205.152 Noise emission standards.
- 205.153 Engine displacement.
- 205.154 Consideration of alternative test procedures.
- 205.155 Motorcycle class and manufacturer abbreviation.
- 205.156 [Reserved]
- 205.157 Requirements.
- 205.157-1 General requirements.
- 205.157-2 Compliance with standards.
- 205.157-3 Configuration identification.
- 205.158 Labeling requirements.
- 205.159 Testing by the Administrator.
- 205.160 Selective enforcement auditing (SEA) requirements.
- 205.160-1 Test request.
- 205.160-2 Test sample selection and preparation.
- 205.160-4 Testing procedures.
- 205.160-5 Reporting of the test results.
- 205.160-6 Passing or failing under SEA.
- 205.160-7 Continued testing.
- 205.160-8 Prohibition of distribution in commerce; manufacturer's remedy.
- 205.162-1 Warranty.
- 205.162-2 Tampering.
- 205.162-3 Instructions for maintenance, use, and repair.
- 205.163 Recall of noncomplying motorcycles; relabeling of mislabeled motorcycles.

Subpart E—Motorcycle Exhaust Systems

- 205.164 Applicability.
- 205.165 Definitions.
- 205.166 Noise emission standards.
- 205.167 Consideration of alternative test procedures.
- 205.168 Requirements.
- 205.168-1 General requirements.
- 205.168-2 [Removed]
- 205.169 Labeling requirements.
- 205.170 Testing by the Administrator.
- 205.171 Selective enforcement auditing (SEA) requirements.
- 205.171-1 Test request.
- 205.171-2 Test exhaust system sample selection and preparation.
- 205.171-3 Test motorcycle sample selection.
- 205.171-6 Test procedures.
- 205.171-7 Reporting of the test results.
- 205.171-8 Passing or failing under SEA.
- 205.171-9 Continued testing.
- 205.171-10 Prohibition on distribution in commerce; manufacturer's remedy.
- 205.173 In-use requirements.
- 205.173-1 Warranty.

Sec.

- 205.173-2 Tampering.
- 205.173-3 Warning statement.
- 205.173-4 Information sheet.
- 205.174 Remedial orders.
- Appendix I: Motorcycle Noise Emission Test Procedure

Appendix II: Sampling Tables

Authority: Sec. 6, Noise Control Act (42 U.S.C. 4905) and additional authority as specified.

2. In § 205.151, paragraph (a)(24) is removed and reserved and paragraph (a)(27) is revised to read as follows:

§ 205.151 Definitions.

(a) * * *

(27) "Test vehicle" means a vehicle in a Selective Enforcement Audit test sample.

3. In § 205.154, the last sentence is revised to read as follows:

§ 205.154 Consideration of alternative test procedures.

* * * "After approval by the Administrator, testing conducted by manufacturers using alternative test procedures will be accepted by the Administrator for all purposes including, but not limited to, selective enforcement audit testing.

4. Section 205.157 is retitled as follows:

§ 205.157 Requirements.

§ 205.157-1 [Amended]

5. In 205.157-1, paragraphs (a) (1) and (2) are removed; paragraphs (a)(3) and (4) are redesignated paragraphs (a)(1) and (2); and paragraph (a)(1) is revised to read as follows:

(1) Shall be labeled in accordance with the requirements of section 205.158 of this subpart.

6. In § 205.157-1, paragraph (c) is revised to read as follows:

(c) Subsequent manufacturers of a new product which conforms to the definition of vehicle in these regulations when received by them from a prior manufacturer, need not fulfill the requirements of paragraph (a)(1) of this section where such requirements have already been complied with by a prior manufacturer.

7. Section 205.157-2 is retitled to read as follows:

§ 205.157-2 Compliance with standards.

8. In § 205.157-2, paragraph (a)(1) is revised to read as follows:

(a)(1) Prior to distribution in commerce of vehicles of a specific configuration, the first manufacturer of such vehicle must verify such configurations in accordance with the requirements of this subpart.

9. In § 205.157-2, paragraph (a)(2) is removed and reserved.

10. In § 205.157-2, paragraph (b) is revised to read as follows:

(b) The requirements for purposes of testing by the Administrator and selective enforcement auditing with regard to each vehicle configuration consist of:

(1) Testing in accordance with § 205.160-4 of a vehicle selected in accordance with § 205.160-2.

(2) Compliance of the test vehicle with the applicable standard when tested in accordance with § 205.160-4.

11. In § 205.157-2, paragraph (c) (1)(iii) is revised to read as follows:

(c)(1) * * *

(iii) Testing in accordance with § 205.160-4 of a vehicle selected in accordance with § 205.160-2 which must be a vehicle of the configuration which is identified pursuant to paragraph (c)(1)(ii) of this section as having the highest sound pressure level (estimated or actual) within the category.

12. In § 205.157-2, paragraph (c) (1)(v) is removed.

13. In § 205.157-2, paragraph (c) (2) is revised to read as follows:

(c) * * *

(2) Where the requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within a category are considered represented by the tested vehicle.

14. § 205.157-2, paragraph (c) (3) is revised to read as follows:

(c) * * *

(3) Where the manufacturer tests a vehicle configuration which has not been determined as having the highest sound pressure level of a category, but all other requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within that category which are determined to have sound pressure levels not greater than the tested vehicle are considered to be represented by the

tested vehicle; however, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of (b)(1) and/or (c)(1) of this section any configurations in the subject category which have a higher sound pressure level than the vehicle configuration tested.

15. In § 205.157-2, paragraph (d) is revised to read as follows:

(d) A manufacturer may elect for purposes of Testing by the Administrator and Selective Enforcement Auditing to use representative testing pursuant to paragraph (c) of this section for all or part of his product line.

16. In § 205.157-2, paragraphs (e) (1) and (2) are revised to read as follows:

- (a) . . .
- (1) In the case of representative testing, a new test vehicle from another configuration must be selected, according to the requirements of paragraph (c) of this section, in order to verify the configurations represented by the non-compliant vehicle.
 - (2) Modify the test vehicle and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production vehicles of the same configuration in the same manner as the test vehicle before distribution into commerce.

17. In § 205.157-2, paragraph (f) is removed.

§§ 205.157-4-205.157-10 [Removed]

18. Sections 205.157-4 through 205.157-10 are removed.

§ 205.158 [Amended]

19. In § 205.158, paragraph (a)(1) is revised to read as follows:

(a)(1) The manufacturer of any vehicle subject to this subpart must, at the time of manufacture, affix a label, of the type specified in paragraph (a) (2), (3), and (4) of this section, to all such vehicles to be distributed in commerce.

20. In § 205.158, paragraph (a)(3) is revised to read as follows:

(a) . . .

(3) The label must be affixed by the vehicle manufacturer to the vehicle in such a manner that the label cannot be removed without destroying or defacing it, and must not be affixed to any piece of equipment that is easily detached from such vehicle.

21. In § 205.158, paragraph (e) is removed.

22. Section 205.159, paragraph (c)(5) is revised to read:

§ 205.159 Testing by the Administrator.

(c) . . .

(5) Testing of up to 10 percent of the manufacturer's test vehicles for a model year if the Administrator determines testing these vehicles at the EPA test site is necessary to assure that a manufacturer has acted or is acting in compliance with the Act.

23. In § 205.160-2, the section title and paragraph (a) are revised to read as follows:

§ 205.160-2 Test sample selection and preparation.

(a) Vehicles comprising the sample which are required to be tested under a test request in accordance with this subpart must be selected consecutively as they are produced. Before the official test, the test vehicle must not be prepared, tested, modified, adjusted, or maintained in any manner unless such preparation, tests, modifications, adjustments or maintenance are part of the manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal vehicle assembly and inspection procedures, are required or permitted under this subpart, or are approved in advance by the Administrator. For purposes of this section, prescribed manufacturing and inspection procedures include quality control testing and assembly procedures normally performed by the manufacturer on like products during early production if the resulting testing is not biased by this procedure. In the case of imported products, the manufacturer may perform adjustments, preparations, modification or tests normally performed at the port of entry by the manufacturer to prepare the vehicle for delivery to a dealer or customer.

(1) Equipment or fixtures necessary to conduct the test may be installed on the vehicle if such equipment or fixtures have no effect on the noise emissions of the vehicle, as determined by the measurement methodology.

(2) In the event of a vehicle malfunction (i.e., failure to start, etc.) the manufacturer may perform the maintenance that is necessary to enable the vehicle to operate in a normal manner. This maintenance must be documented and reported in the SEA report.

(3) No quality control, quality assurance testing, assembly or selection procedures may be used on the test

vehicle or any portion of the test vehicle including parts and subassemblies, unless such quality control, quality assurance testing, assembly or selection procedures are used normally during the production and assembly of all other vehicles of this configuration which will be distributed in commerce, are required or permitted under this subpart or are approved in advance by the Administrator.

(4) If a vehicle is unable to complete the noise tests, the manufacturer may replace the vehicle. Any replacement vehicle must be a production vehicle of the same configuration as the replaced vehicle or a noisier configuration and will be subject to all the provisions of these regulations. Any replacement must be reported in the SEA report.

§ 205.160-3 [Removed and reserved]

24. Section 205.160-3 is removed and reserved..

§ 205.160-4 [Amended]

25. In § 205.160-4, paragraph (b), the first sentence is removed.

26. In § 205.160-6, paragraph (a)(1) is revised to read as follows:

§ 205.160-6 Prohibition of distribution in commerce; manufacturer's remedy.

(a) . . .

(1) Submission of a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the problem and/or quality control or quality assurance remedies to be taken by the manufacturer to correct the problem.

§ 205.161 [Removed]

27. Section 205.161 is removed.

§ 205.162-1 [Removed]

28. Section 205.162-1 is removed.

29. In § 205.162-2, paragraph (a) is revised; paragraphs (b) and (c) are removed; paragraphs (d) and (e) are revised and redesignated paragraphs (b) and (c), respectively; paragraph (g) is removed; and paragraph (f) is redesignated paragraph (d). The revised portions of § 205.162-2 read as follows:

§ 205.162-2 Tampering.

(a) For each configuration of vehicles covered by this part, the manufacturer shall develop a list of acts which, in his judgment, constitute the removal or rendering totally or partially inoperative, other than for purposes of maintenance, repair, or replacement of noise control devices or elements of design of the vehicle.

(b) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

Tampering With Noise Control System Prohibited

Federal law prohibits the following acts or causing thereof:

(1) The removal or rendering inoperative by any person other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new vehicle for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use, or (2) the use of the vehicle after such device or element of design has been removed or rendered inoperative by any person.

(2) This statement:

Among those acts presumed to constitute tampering are the acts listed below.

Immediately following this statement, the manufacturer must include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a presumed act of tampering has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.152, the act will not constitute tampering.

§ 205.162-3 [Amended]

30. In § 205.162-3, paragraphs (c), (d), and (e) are removed.

§ 205.162-4 [Removed]

31. Section 205.162-4 is removed.

§ 205.165 [Amended]

32. In § 205.165, paragraph (a)(6) is removed and reserved.

33. In § 205.165, paragraph (a)(8) is revised to read as follows:

(a)

(8) "Test exhaust system" means an exhaust system in Selective Enforcement Audit test sample.

34. Section 205.168 is retitled to read as follows:

§ 205.168 Requirements.

35. Section 205.168-1 is revised to read as follows:

§ 205.168-1 General requirements.

(a) Each manufacturer of motorcycle exhaust systems manufactured for Federally regulated motorcycles and distributed in commerce in the United States which are subject to the noise emission standards prescribed in this

subpart and not exempted in accordance with Subpart A, § 205.5:

(1) Must label each exhaust system in accordance with the requirements of § 205.169 of this subpart; and

(2) Must only manufacture exhaust systems which conform to the applicable noise emission standard established in § 205.168 of this regulation when installed on any Federally regulated motorcycle for which it has been designed and marketed.

(b) The manufacturer who is required to conduct testing to demonstrate compliance with a particular standard must satisfy all other provisions of this subpart applicable to that standard.

(c) Prior to distribution into commerce of exhaust systems of a specific category, the manufacturer of the exhaust system shall verify the category in accordance with this subpart.

(2) Notwithstanding paragraph (a)(1) of this section, the manufacturer may distribute in commerce exhaust systems of that category for up to 90 days if weather or other conditions beyond the control of the manufacturer make testing of a category impossible and if the following conditions are met:

(i) The manufacturer performs the tests required under paragraphs (d) or (e) of this section on such category as soon as conditions permit;

(d) The requirements for each exhaust system category consist of:

(1) Testing in accordance with § 205.171-1 of an exhaust system selected in accordance with § 205.171-2.

(2) Compliance of the test exhaust system on a motorcycle for which it is marketed with the applicable standard when tested in accordance with Appendix k and

(e) A manufacturer is required to verify all categories of exhaust systems within his product line for each class of Federally regulated motorcycle for which it is designed and marketed. A category of a replacement exhaust system is defined by a separate combination of at least the following parameters:

(1) *Muffler/Silencer*: (i) Volume; (ii) type of absorption material; (iii) amount of absorption material; (iv) length; (v) diameter; (vi) directional flow of exhaust gas; (vii) interior construction; (viii) shell and inner construction material; (ix) number of header pipes entering muffler; and (x) specific motorcycle application.

(2) *Expansion Chamber*: (i) Volume; (ii) diameter; (iii) construction material; (iv) directional flow of exhaust gas; (v) length; and (vi) specific motorcycle application.

(3) *Spark Arrestors*: (i) Volume; (ii) construction material; (iii) directional flow of exhaust gas; (iv) length; (v) diameter; and (vi) specific motorcycle application.

(4) Other Exhaust System

Components: (i) Volume; (ii) shape; (iii) length; (iv) diameter; (v) material; (vi) directional flow of exhaust gas; and (vii) specific motorcycle application.

(f) Exhaust system components sold as separate products shall be tested pursuant to § 205.169(b).

(g) Original equipment exhaust systems that are also sold as replacement systems for the same motorcycle configuration need not be tested under this subpart if they have been tested or represented in a test report under Subpart D of this part.

(h) A manufacturer has the following alternatives if any test exhaust system is determined not to be in compliance with applicable standards:

(i) Modify the test exhaust system and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production exhaust systems of the same category in the same manner as the test exhaust system before distribution in commerce.

§ 205.168-2—205.168-10 [Removed]

36. Sections 205.168-2 through 205.168-10 are removed.

§ 205.169 [Amended]

37. In § 205.169, paragraph (a) is revised to read as follows:

(a) The manufacturer of any product (including the manufacturer of newly produced motorcycles) subject to this subpart must, at the time of manufacture, affix a permanent, legible label, or mark of the type and in the manner described below, containing the information provided below, to all such exhaust systems or exhaust system components to be distributed in commerce.

38. In § 205.169, paragraph (f) is removed.

§ 205.170 [Amended]

39. In § 205.170, paragraph (c)(1) is removed and reserved.

40. In § 205.170, paragraph (c)(5) is revised to read as follows:

(c) . . .

(5) In addition to any exhaust systems included in paragraph (c) (1), (2), (3), or (4) of this section, testing of up to 10 percent of the manufacturer's exhaust systems for a model year if the Administrator determines testing these exhaust systems at the EPA test site is

necessary to assure that a manufacturer has acted or is acting in compliance with the Act.

41. In § 205.171-2, the section title and paragraph (a) are revised to read as follows:

§ 205.171-2 Test exhaust system selection and preparation.

(a)(1) Exhaust systems comprising the sample which are required to be tested under a test request in accordance with this subpart must be selected consecutively as they are produced.

(2) Test motorcycles and test exhaust systems to be used for testing of exhaust systems must be of the subject class which has been assembled using the manufacturer's normal production processes, in stock configuration including exhaust system, as sold or offered for sale in commerce.

(3) Before the official test, the test motorcycle and test exhaust system must not be prepared, tested, modified, adjusted, or maintained in any manner unless such preparation, tests, modifications, adjustments or maintenance are part of the original equipment manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal motorcycle assembly and inspection procedures, or are required or permitted under this subpart, or are approved in advance by the Administrator.

(4) Equipment or fixtures necessary to conduct the test may be installed on the motorcycle, if such equipment or fixtures shall have no effect on the noise emissions of the motorcycle as determined by the measurement methodology.

(5) In the event of a motorcycle malfunction (i.e., failure to start, etc.) maintenance that is necessary may be

performed to enable the vehicle to operate in a normal manner. This maintenance must be documented and reported in the final report prepared and submitted in accordance with this subpart.

(6) No quality control, quality assurance testing, assembly or selection procedures may be used on the test vehicle or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other motorcycles of that class which will be distributed in commerce, unless such procedures are required or permitted under this subpart or are approved in advance by the Administrator.

§§ 205.171-4-205.171-5 (Removed)

42. Sections 205.171-4 and 205.171-5 are removed.

43. In § 205.171-6, paragraph (b), the first sentence is revised to read as follows:

§ 205.171-6 Testing procedures.

(b) No maintenance may be performed on the test exhaust system except as provided by § 205.171-2.

44. In § 205.171-10, paragraph (a)(1) is revised to read as follows:

§ 205.171-10 Prohibition on distribution in commerce; manufacturer's remedy.

(a) . . .

(1) Submission of a written report to the Administrator which identifies the reason for the noncompliance of the exhaust systems, describes the problem and describes the proposed quality control or quality assurance remedies to be taken by the manufacturer to correct the problem.

45. In § 205.173-1, paragraph (b) is removed and reserved and paragraph (a) is revised as follows:

§ 205.173-1 Warranty.

(a) The exhaust system manufacturer must include in the information supplied to the ultimate purchaser pursuant to section 205.173-4, the following statement:

Noise Emission Warranty

[The manufacturer] warrants that this exhaust system, at time of sale, meets all applicable U.S. E.P.A. Federal noise standards. This warranty extends to the first person who buys this exhaust system for purposes other than resale, and to all subsequent buyers. Warranty claims should be direct to _____. (Manufacturer shall fill in this blank with his name, address and telephone number.)

46. In § 205.173-2, the introductory text is revised to read as follows:

§ 205.173-2 Tampering.

The manufacturer must include the following statement pursuant to § 205.173-4 with each product of that category the manufacturer distributes into commerce.

47. In § 205.173-3, the introductory text is revised to read as follows:

§ 205.173-3 Warning statement.

The manufacturer must include the following statement pursuant to § 205.173-4 with each product of that category the manufacturer distributes into commerce.

§ 205.173-5 (Removed)

48. Section 205.173-5 is removed.



beginning on or after December 1, 1983, under the provisions of 38 U.S.C. 521, 541, or 542. (38 U.S.C. 3023)

6. In § 3.282, paragraph (b)(2) is revised to read as follows:

§ 3.262 Evaluation of income.

(b) *Income of spouse.* Income of the spouse will be determined under the rules applicable to income of the claimant.

(2) *Veterans.* The separate income of the spouse of a disabled veteran who is entitled to pension under laws in effect on June 30, 1990, will not be considered. Where pension is payable under section 306(a) of Pub. L. 95-588, to a veteran who is living with a spouse there will be included as income of the veteran all income of the spouse in excess of whichever is the greater, \$1,098 (\$1,030 after May 31, 1982 and before December 1, 1983) or the total earned income of the spouse, which is reasonably available to or for the veteran, unless hardship to the veteran would result. The presumption that inclusion of such income is available to the veteran and would not work a hardship on him or her may be rebutted by evidence of unavailability or of expenses beyond the usual family requirements. (38 U.S.C. 521(f); sec. 306(a)(2)(B) of Pub. L. 95-588; 92 Stat. 2497).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 146

(OW-FRL 2277-7)

State Underground Injection Control Programs: Permitting Procedures, Technical Criteria and Standards; Availability of Guidance Documents

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: EPA promulgated final amendments to its Underground Injection Control (UIC) Program regulations on February 3, 1982 (47 FR 4992; 40 CFR Part 122 (Permitting Procedures recently recodified in 40 CFR Part 144, 48 FR 1418) and Part 146 (Technical Criteria and Standards)). The UIC regulations are promulgated pursuant to Section 1421 of the Safe Drinking Water Act. As a result of these amendments, EPA has received several questions regarding the proper

interpretation of certain provisions of the UIC regulations.

This document announces the availability of two guidance documents that provide interpretation of the UIC regulations: Ground-Water Program Guidance No. 28, Appropriate Classification and Regulatory Treatment of Experimental Technologies; and Ground-Water Program Guidance No. 29, Consolidation of Permitting Procedures for Multiple Wells.

ADDRESSES: These guidances are available from EPA Headquarters and the Regional Offices. To obtain a copy contact:

Headquarters—Thomas E. Belk, Chief, Ground-Water Protection Branch, WH 550, 401 M Street SW, Washington, DC 20460.

Region I—Jerome Healey, Chief, Water Supply Branch, JFK Federal Building, Boston, MA 02203.

Region II—Walter Andrews, Chief, Water Supply Branch, Federal Building, 26 Federal Plaza, New York City, NY 10007.

Region III—Robert Blanco, Chief, Water Supply Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106.

Region IV—Donald J. Guinyard, Chief, Water Supply Branch, 345 Courtland Street, Atlanta, GA 30365.

Region V—Dr. Edith Tebo, Chief, Water Supply Branch, 230 South Dearborn Street, Chicago, IL 60604.

Region VI—Adelle Mitchell, Chief, Water Supply Branch, 1201 Elm Street, Dallas, TX 75270.

Region VII—Tom Gillard, Chief, Water Supply Branch, 324 E. 11th Street, Kansas City, MO 64106.

Region VIII—Roger Frenette, Chief, Water Supply Branch, 1860 Lincoln Street, Denver, CO 80295.

Region IX—Bill Thurston, Chief, Water Supply Branch, 215 Fremont Street, San Francisco, CA 94105.

Region X—William A. Mullen, Chief, Water Supply Branch, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Thomas E. Belk, Chief, Water Supply Branch, Environmental Protection Agency, 401 M Street SW, Washington, DC, 20460; (202) 382-5530.

Dated: May 31, 1983.

Rebecca W. Hanmer,
Acting Assistant Administrator for Water.

[FR Doc. 83-13344 Filed 6-10-83; 8:43 am]
BILLING CODE 6560-50-M

40 CFR Parts 204, 205, and 211

(A-FRL 2376-4)

Noise Emission Standards for Portable Air Compressors, Medium and Heavy Trucks, Motorcycles and Motorcycle Replacement Exhaust Systems, Truck Mounted Solid Waste Compactors, and Noise Labeling Requirements for Hearing Protectors; Final Rule; Revocation of Product Verification Testing, Reporting and Recordkeeping Requirements; Correction and Technical Amendments.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction and technical amendments.

SUMMARY: This document corrects a final regulation published December 28, 1982 (47 FR 57709) which implemented a revocation of product verification testing, reporting and recordkeeping requirements for noise emission standards for portable air compressors, medium and heavy trucks, motorcycles and motorcycle replacement systems, truck mounted solid waste compactors, and noise labeling requirements for hearing protectors. The action is necessary to correct minor inconsistencies.

EFFECTIVE DATE: June 13, 1983.

FOR FURTHER INFORMATION CONTACT: Louise Gierach, Office of Air, Noise and Radiation (ANR-445), Environmental Protection Agency, Washington, D.C. 20460; (202) 382-2935.

Corrections

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

Subpart B—Medium and Heavy Trucks

§ 205.57-2 (Corrected)

1. In § 205.57-2 *Test Vehicle Sample Selection*, paragraph (a), corrected line 15, column 1 on page 57715 is as follows: "number of vehicles as specified in paragraph (c) of."

§ 205.57-3 (Corrected)

2.a. In § 205.57-3 *Test Vehicle Preparation*, paragraph (a), corrected line 18, column 2 on page 57715 after the word "Administrator," add as follows: "For purposes of this section, prescribed manufacturing and inspection procedures include quality control testing and assembly procedures normally performed by the manufacturer on like products during early production so long as the resulting testing is not biased by the procedure."

2. In § 205.57-3, paragraph (a) on page 5772 is corrected in the last sentence by inserting the word "The" and by adding the following phrase to the beginning of that sentence: "in the case of imported products * * *".

§ 205.55-2 (Amended)

3. In § 205.55-2, paragraph (a)(3) is revised to read as follows:

(3) * * *

(3) At any time following receipt of notice under this section with respect to a configuration, the Administrator may require that the manufacturer ship test vehicles to the EPA test facility in order for the Administrator to perform the tests required for production verification.

§ 205.53-1 (Corrected)

4. In § 205.53-1 *Noise Emission Warranty*, corrected line 19 through 34, column 3 on page 57715 is as follows:

Noise Emissions Warranty

(Name of vehicle manufacturer) warrants to the first person who purchases this vehicle for purposes other than resale and to each subsequent purchaser that this vehicle as manufactured by (name of vehicle manufacturer), was designed, built and equipped to conform at the time it left (name of vehicle manufacturer)'s control with all applicable U.S. EPA Noise Control Regulations.

This warranty covers this vehicle as designed, built and equipped by (Name of vehicle manufacturer), and is not limited to any particular part, component or system of the vehicle manufactured by (name of vehicle manufacturer). Defects in design, assembly or in any part, component or system of the vehicle as manufactured by (name of vehicle manufacturer), which, at the time it left (name of vehicle manufacturer)'s control, caused noise emissions to exceed Federal standards, are covered by this warranty for the life of the vehicle.

§ 205.58-2 (Corrected)

5. Section 205.58-2 *Tampering*, paragraph (c), corrected line 17, column 1 on page 57716 is as follows: "which a proscribed act has been".

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

Subpart D—Motorcycles

§ 205.192-1 (Corrected)

1. Section 205.192-1 *Warranty*, corrected line 42, column 3 on page 57721 is as follows: "3. Section 205.192-1 (c), (d), and (e) are removed."

§ 205.193-1 (Corrected)

2. Section 205.193-1 *General Requirements*, paragraph (c), corrected

line 24, column 2 on page 57722 is as follows: "(1) notwithstanding paragraph (b)(1)".

3. Section 205.193-11 *Order to cease distribution* paragraph (a) is revised to read as follows:

"§ 205.193-11 *Order to cease distribution*.

"(a) If a category of exhaust systems is found not to comply with this subpart because it has not been verified or labeled as required by § 205.189, the Administrator may issue an order to the manufacturer to cease distribution in commerce exhaust systems of that category. This order will not be issued if the manufacturer has made a good faith attempt to properly production verify the category and can establish such good faith."

Dated: May 27, 1983.

Charles L. Elkins,

Acting Assistant Administrator for Air, Noise and Radiation.

(FR Doc. 83-15114 Filed 6-10-83; 8:43 am)
BILLING CODE 6040-60-M

40 CFR Part 271

[SW-4-FRL 2381-4]

Hazardous Waste Management Program; North Carolina; Request for Extension of Application Deadline for Interim Authorization Phase II, Component C

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of application submission and interim authorization period.

SUMMARY: On April 11, 1983, the State of North Carolina requested a ninety (90) day extension beyond the July 26, 1983, deadline for application for Phase II, Component C, interim authorization (authority to permit land disposal facilities) under the Resource Conservation and Recovery Act of 1976, as amended. EPA is granting this extension. One effect of this action is to allow North Carolina to submit its application after July 26, 1983. It also avoids termination on July 26 of the interim authorization which EPA granted previously to the State for the Phase I and Phase II, Components A and B, portions of the hazardous waste program.

EFFECTIVE DATE: May 4, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Scarborough, Chief, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone (404) 831-3016.

SUPPLEMENTARY INFORMATION:

Background

40 CFR 271.122(c)(4) (formerly § 123.122(c)(4); 47 FR 32377, July 26, 1982) requires that States which have received any but not all Phases/Components of interim authorization amend their original submissions by July 26, 1983, to include all Components of Phase II. 40 CFR 271.137(a) (formerly § 123.137(a); 47 FR 32378, July 26, 1982) further provides that on July 26, 1983, interim authorizations terminate except where the State has submitted by that date an application for all Phases/Components of interim authorization.

Where the authorization (approval) of the State program terminates, EPA is to administer and enforce the Federal program in those States. However, the Regional Administrator may, for good cause, extend the July 26, 1983, deadline for submission of the interim authorization application and the deadline for the termination of the approval of the State program.

Note.—40 CFR Part 123, including the July 26, 1982 amendments (47 FR 32373), was recodified on April 1, 1983 as 40 CFR Part 271 (48 FR 14243).

North Carolina received Phase I interim authorization on December 18, 1980. Phase II, Components A and B, interim authorization was granted on March 28, 1982. However, North Carolina's ability to apply for Phase II, Component C, interim authorization before July 26, 1983, was delayed when the North Carolina General Assembly did not enact the necessary legislation enabling the State Commission for Health Services to adopt revised land disposal rules prior to July 26, 1983. Anticipating enactment of the necessary legislation in late May 1983, North Carolina has committed to the following schedule for applying for authorization:

July 1983—Hold three public meetings, and a public hearing on proposed revised land disposal regulations.

August 1983—Request the Commission for Health Services to adopt the regulations to become effective October 1, 1983.

August 1983—Submit a draft application for Component C to EPA if regulations are adopted.

September 1983—Submit final application for Component C.

November 1983—Submit draft application for Final Authorization.

Decision

On May 4, 1983, in consideration of the State Commission's efforts to obtain the necessary legislation and North Carolina's past performance in managing and implementing a

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Part 205

[AM-FRL 2070-6]

Noise Emission Standards: Truck-
Mounted Solid Waste CompactorsAGENCY: Environmental Protection
Agency.

ACTION: Final rule.

SUMMARY: This document rescinds the noise emission regulation for Truck-Mounted Solid Waste Compactors (Subpart F of 40 CFR Part 205) issued under the authority of Section 6 of the Noise Control Act of 1972 (42 U.S.C. 4905). Notice of Intent to rescind this regulation was published in the Federal Register on December 1, 1982 (44 FR 5411).

This action is being taken based on a consideration of the costs this regulation imposes on the compactor manufacturing industry, prevailing conditions of the national economy in general, and the compactor manufacturing industry in particular, and the President's policy to reduce the burdens of Federal regulation.

DATE: This document is effective August 15, 1983.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Office of Air, Noise and Radiation (ANR-415), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 382-2935.

SUPPLEMENTARY INFORMATION:

1.0 Regulatory History

In accordance with Section 5(b)(1) of the Noise Control Act of 1972, the Administrator of the Environmental Protection Agency, on May 29, 1975 (40 FR 23105) identified Truck-Mounted Solid Waste Compactors (TMSWC), more commonly referred to as "garbage trucks" or "compactors," as a major source of noise. This identification was made, in part, on the basis that, as special auxiliary equipment for trucks, the regulation of compactors would complement the existing Federal noise emission regulation for medium and heavy trucks (40 CFR Part 205, Subpart B).

Under the authority of Section 6(a)(1) of the Act, the Administrator published, on August 20, 1977, a Notice of Proposed Rulemaking that specified "not-to-exceed" noise emission levels for newly manufactured compactor vehicles (42 FR 43226). The Agency published a Notice of Final Rulemaking on October 1, 1979 (44 FR 56524).

In late 1980, several compactor manufacturers informed the Agency that the regulation placed testing and reporting requirements upon them that, in their opinion, were excessively burdensome and costly. Based on meetings with the industry, as well as information obtained through practical experience with this regulation by several compactor manufacturers and by EPA's enforcement personnel, the Agency agreed it should explore alternative testing and compliance provisions. Accordingly, on February 12, 1981, the Administrator issued a Notice of Reconsideration (48 FR 12975) that suspended all enforcement of the regulation until EPA could reassess the testing and reporting requirements. However, after full consideration of the issues involved, the Agency proposed to rescind the regulations.

2.0 Considerations for Rescission

As outlined in detail in the proposed rescission notice, since promulgation of the compactor regulation a number of developments have occurred, including: (a) The economic position of the TMSWC industry has weakened substantially since promulgation of the regulation, unit sales having declined nearly 25 percent between 1979 and 1981; (b) discussions with the industry have revealed that many compactor manufacturers regard each combination of compactor body and truck chassis as unique, which results in significantly higher testing costs than were originally anticipated by the Agency; (c) a major portion of the TMSWC industry has indicated that it no longer desires the protection of national uniformity of treatment provided by the preemption provisions of the Act; and (d) bills to amend the Noise Control Act passed both the House and Senate which would explicitly remove the Agency's authority to regulate this product. However, no bill was enacted into law before the end of the Congressional session.

Section 6(c)(1) of the Noise Control Act directs the Administrator to take into consideration, among other factors, the cost of compliance in the establishment of regulations for products which have been identified as major sources of noise. Accordingly, the Administrator has concluded that economic considerations are relevant in deciding to rescind the noise emission regulation for truck-mounted solid waste compactors. Based on the above considerations as discussed in more detail in the proposal, EPA has concluded that the costs of compliance with this regulation are excessive.

3.0 Environmental Considerations

In taking this action, the Administrator has taken into consideration the nature of compactor noise impacts and the substantial growth in local noise control programs and ordinances since this product was identified as a major noise source for Federal regulation. For the most part, noise impacts from compactors are highly localized, occurring primarily along local roads and streets. Approximately 50% of the compactors in use are under the direct control of State and local governments through government waste collection services, and much of the private waste collection sector is subject to controls on routing, hours of operation, and number of trucks in operation.

The Administrator believes that, absent the industry's need for uniform national noise control standards, the control of compactor noise by State and local governments through regulatory initiatives and programs such as "Buy-Quiet" has the potential to mitigate any adverse environmental impacts that might result from rescission of the TMSWC noise emission regulation.

4.0 Docket Summary

There were a total of 13 responses to the Agency's proposed rescission; 7 comments were received from the industries affected and their trade association, and 6 comments were received from State or local governments or their respective associations. The 13 commenters were all in agreement with the proposed rescission. The Administrator believes that the unanimous concurrence by respondents and the rather limited response to this action per se further indicates that a decision to rescind this regulation is the proper course by the Agency.

In summary, State and local respondents to the proposal basically felt that regulation of these noise sources is a State and local problem which can best be handled at that level, and that State and local governments have the means, in cooperation with industry, to mitigate any adverse environmental impacts that might result. Some of the State and local respondents indicated that Federal cooperative involvement in noise control should continue in order to help provide either technical or financial assistance.

Industry responses reiterated the Agency's rationale in the proposal to rescind the regulation. The trade association for the industry did express concern that the Agency should not be

supportive of a "Buy-Quiet" program for State and local governments. The Agency however, feels that a "Buy-Quiet" program is a viable non-regulatory alternative through which State and local governments can, working cooperatively with industry and their counterpart State and local governments, effect the purchase of quieter products. The Agency remains in full support of such a voluntary program.

5.0 List of Subjects in 40 CFR Part 205

Labeling, Motor vehicles, Noise control, Reporting and recordkeeping requirements.

6.0 Conclusions

It is the Administrator's judgment that the Federal Noise Emission Regulation for Truck-Mounted Solid Waste Compactors (40 CFR Part 205, Subpart F) should be rescinded.

This action is expected to save societal resources estimated at \$33 million in equivalent annual costs, and enable the compactor manufacturing industry to avoid an estimated \$15 million annually in engineering and testing costs. Further, the Administrator believes that it is within the ability of

State and local governments to control the noise of these products, and thereby substantially mitigate any adverse environmental effects that might result from the rescission of this regulation.

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory Impact Analysis. This action is not a major regulation as it proposes to rescind a regulation, and because:

- (1) It will not have an annual adverse effect on the economy of \$100 million or more;
 - (2) It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
 - (3) It will not cause significant adverse effects 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.
- Pursuant to the provisions of 5 U.S.C. 601, *et seq.*, I hereby certify that this

action will not have a significant economic impact on a substantial number of small entities, because it withdraws the need for small entities to implement noise control features on Truck-mounted Solid Waste Compactors.

This final action was submitted to the Office of management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB, and any EPA response to those comments, are included in the public docket for this action.

For the reasons set forth in the preamble, EPA, hereby removes the Federal Noise Emission regulation for Truck-Mounted Solid Waste Compactors (Subpart F of 40 CFR Part 205).

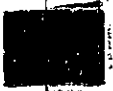
Authority: Section 6 of the Noise Control Act of 1972, 42 U.S.C. 4905.

Dated: July 11, 1983

William D. Ruckelshaus,
Administrator.

[FR Doc. 83-19163 Filed 7-14-83; 8:45 am]
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EPA—SDWA

Current and Projected Rulemakings

Timetable:

Action	Date	FR Cite
ANPRM	10/00/83	
NPRM RMCLs	09/00/84	

Small Entity: Yes
 Additional Information: SAR No. 1755.
 FTS: 8-382-7575.

Agency Contact: Joseph Cotruvo, Environmental Protection Agency, (WH-530), Washington, DC 20460, 202 382-7575
 RIN: 2040-AA55

120. PRIMARY DRINKING WATER REGULATIONS: FLUORIDE (REVISION)

Legal Authority: 42 USC 300 / SDWA 1412

CFR Citation: 40 CFR 141

Abstract: The Agency will assess the maximum contaminant level (MCL) for fluoride in the National Interim Primary Drinking Water Regulations to determine if it reflects potential health effects and the performance and cost of available treatment technologies. Based

on statutory requirements and recent technical information, the Agency is considering numerous options.

Timetable:

Action	Date	FR Cite
NPRM (RMCLS)	04/00/84	
NPRM (MCLS)	01/00/85	

Small Entity: Yes
 Additional Information: SAR No. 1758.
 FTS: 8-382-7575.
 Analysis: Draft RFA; IIA

Agency Contact: Joseph Cotruvo, Environmental Protection Agency, (WH-530), Washington, DC 20460, 202 382-7575
 RIN: 2040-AA58

121. UNDERGROUND INJECTION CONTROL PROGRAM: FEDERALLY ADMINISTERED PROGRAMS (REVISION)

Legal Authority: 42 USC 300 / SDWA 1412

CFR Citation: 40 CFR 144.1; 40 CFR 144.3; 40 CFR 144.21; 40 CFR 144.22; 40

CFR 144.23; 40 CFR 144.25; 40 CFR 144.26; 40 CFR 144.27; 40 CFR 144.28; 40 CFR 147

Abstract: EPA is required to prescribe a UIC program in States that do not have an approved program. The amendments to 40 CFR 144 and the new 40 CFR 147 provide UIC programs for the 22 States in which EPA will administer the program.

Timetable:

Action	Date	FR Cite
NPRM	09/02/83	48 FR 40098
Final Action	03/00/84	

Small Entity: No
 Additional Information: SAR No. 1972.
 FTS: 8-382-5530.
 Agency Contact: Thomas E. Belk, Environmental Protection Agency, (WH-530), Washington, DC 20460, 202 382-5530
 RIN: 2040-AA61
 BILLING CODE 6440-10-7

ENVIRONMENTAL PROTECTION AGENCY (EPA)—Noise Control Act Current and Projected Rulemakings

122. WITHDRAWAL OF PRODUCTS FROM THE AGENCY'S REPORTS IDENTIFYING MAJOR NOISE SOURCES AND WITHDRAWAL OF PROPOSED RULES

Legal Authority: 42 USC 4904 (b)(1) / NCA 5(b)(1); 42 USC 4905 / NCA 8(a)(1)

CFR Citation: 40 CFR 51

Abstract: This action withdraws certain products from the Agency's report identifying major noise sources issued under authority of Section 5(b)(1) of the Noise Control Act of 1972. These products are: Truck Transport Refrigeration Units, Power Lawn Mowers, Pavement Breakers, Rock Drills, Wheel and Crawler Tractors and Buses. This action also withdraws proposed noise regulations for Wheel and Crawler Tractors, and Buses, issued under the authority of Section 6(a)(1) of the Act.

Timetable:

Action	Date	FR Cite
NPRM	12/01/82	47 FR 54108
Final Action	09/00/00	

Small Entity: No
 Additional Information: SAR No. 2046.
 FTS: 8-382-7748.

No CFR parts pertain. This action withdraws proposals which were not codified.

Agency Contact: Robert C. Rose, Environmental Protection Agency, Washington, DC 20460, 202 382-7748
 RIN: 2060-AB24

123. MOTOR CARRIERS ENGAGED IN INTERSTATE COMMERCE: NOISE EMISSION STANDARDS (REVISION)

Legal Authority: 42 USC 4917 / NCA 18
 CFR Citation: 40 CFR 202

Abstract: This action proposes to amend the noise emission regulations for motor carriers engaged in interstate commerce. The amendment aligns the noise emission standards of this regulation with those of the regulation for newly manufactured medium and heavy trucks. The proposed revised standards apply only to trucks manufactured on or after January 1, 1978 (post-1977), that have a Gross Vehicle Weight Rating (GVWR) or a Gross Combination Weight Rating (GCWR) greater than 10,000 pounds.

Timetable:

Action	Date	FR Cite
NPRM	11/00/83	
Final Action	00/00/00	

Small Entity: No
 Additional Information: SAR No. 2045.
 FTS: 8-382-7748.

Agency Contact: Robert C. Rose, Environmental Protection Agency, Washington, DC 20460, 202 382-7748
 RIN: 2060-AB20

ENVIRONMENTAL PROTECTION AGENCY (EPA)—Noise Control Act

Completed Actions

COMPLETED RULEMAKINGS

124. RESCISSION OF NOISE EMISSION STANDARDS FOR TRUCK-MOUNTED SOLID WASTE COMPACTORS

CFR Citation: 40 CFR 205 F

Completed:

Reason	Date	FR Cite
Final Action	07/15/83	48 FR 32502

Small Entity: No

Agency Contact: Louise Giersch 202 382-2935

RIN: 2060-AA07

BILLING CODE 6560-90-T

ENVIRONMENTAL PROTECTION AGENCY (EPA)—Resource Conservation and Recovery Act

Current and Projected Rulemakings

125. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES: WASTE OIL

Priority: Major

Legal Authority: 42 USC 6921 / RCRA 3001; 42 USC 6932 / RCRA 3002

CFR Citation: 40 CFR 268

Abstract: Pursuant to the requirements of the Used Oil Recycling Act (incorporated into RCRA by amendment in 1980), the Agency is evaluating what types of regulatory controls should apply to the re-use and re-cycling of used oil. EPA will propose regulations based on these evaluations. In addition the Agency is considering proposal of near term interim controls including notification requirements for facilities that blend, distribute, and burn used oil fuel sold to non-industrial boiler owners.

Timetable:

Action	Date	FR Cite
NPRM	12/18/78	43 FR 58946
RPM	06/00/84	
Interim Final Rule	09/00/85	

Small Entity: Yes

Additional Information: SAR No. 1713.

Docket No: 3012.

FTS:8-382-4788.

Analysis: RIA, RFA

Agency Contact: Michael Petruska, Environmental Protection Agency, (WH-565), Washington, DC 20460, 202 382-4788

RIN: 2050-AA02

126. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE; DELISTING PROCEDURES (REVISION)

Legal Authority: 42 USC 6921 / RCRA

Citation: 40 CFR 260

Abstract: This action makes some minor changes to streamline the existing procedures for delisting wastes that were listed solely because they exhibit a hazardous waste characteristic (i.e., ignitability, corrosivity, reactivity, and EP toxicity). The regulation also streamlines the procedure for changing the status of wastes listed because they are acutely hazardous.

Timetable:

Action	Date	FR Cite
NPRM	05/19/80	46 FR 33066
NPRM	00/00/00	

Small Entity: No

Additional Information: SAR No. 1836.

Docket No. 3001.

FTS:8-382-4770.

Agency Contact: Matthew Straus, Environmental Protection Agency, (WH-565), Washington, DC 20460, 202 382-4770

RIN: 2050-AA02

127. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE; DEFINITION OF SOLID WASTE (REVISION)

Legal Authority: 42 USC 6921 / RCRA 3001

CFR Citation: 40 CFR 261.2; 40 CFR 261.8

Abstract: This action would modify the definition of solid waste and the applicability of RCRA standards to recycled solid wastes. It would regulate those recycling activities which have posed an environmental threat. It will reduce the regulatory burden for recycling. Some materials presently defined as wastes may be excluded from hazardous waste control; others, some presently excluded, may be subject to some level of regulatory control.

Timetable:

Action	Date	FR Cite
NPRM	04/04/83	48 FR 14472
Final Action	09/00/84	

Small Entity: No

Additional Information: SAR No. 1191.

Docket No.

3001. FTS:8-382-4770.

Agency Contact: Matthew Straus, Environmental Protection Agency, (WH-565), Washington, DC 20460, 202 382-4770

RIN: 2050-AA03

128. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE; MIXTURES RULE (REVISION)

Legal Authority: 42 USC 6921 / RCRA 3001

CFR Citation: 40 CFR 261.3

Abstract: The "mixture rule" establishes the presumption that certain mixtures of hazardous and solid wastes are hazardous. EPA has issued an interim final rule which excludes from this presumption of hazardousness certain dilute mixtures from facilities regulated under sections 402 or 307(b) of the Clean Water Act. In addition, mixtures of solid and hazardous wastes listed in Subpart D solely because they exhibit a characteristic of hazardous waste (e.g., ignitability, corrosivity, reactivity) are no longer considered hazardous if they do not meet the hazardous waste characteristics.

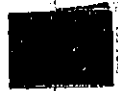
Timetable:

Action	Date	FR Cite
Interim Final Rule	11/17/81	46 FR 56582
Final Action	00/00/00	

Small Entity: No

Additional Information: SAR No. 1760.

Docket No. 3001.



Whoever, whether a person, association, or corporation, makes any contribution to, or in any way supplements the salary of, any Government official or employee for the services performed by him for the Government of the United States—

Shall be fined not more than \$1,000 or imprisoned not more than six months, or both. (June 23, 1948, ch. 645, § 1, 62 Stat. 793.)

Aside from the fact that the acceptance of the proposal made by the involved parties would result in an augmentation of funds appropriated by the Congress for operation of the Emergency Board—which may not be done in absence of a statutory provision authorizing it—we must conclude that the payment or augmentation of the salaries of the three Emergency Board members by the respective organizations involved in the dispute would be in violation of both 45 U. S. C. 160 and 18 U. S. C. 1914, above quoted. *Cf.* 26 Comp. Gen. 15; 16 *id.* 911.

Specifically, therefore, your question is answered in the negative.

[B-125613]

Appropriations—Anti-Deficiency Act Violations—Agency Reports

The charging of part of a contract for the installation of automatic telephones against an appropriation allocation which is insufficient to cover the entire contract and the balance against anticipated proceeds from the sale of replaced equipment results in an overobligation of appropriations in violation of the Anti-Deficiency Act (31 U. S. C. 665), which violation must be immediately reported by the head of the agency to the President and to the Congress pursuant to section 2 (1) (2) of the act notwithstanding that the overobligation resulted from a misinterpretation of the regulations on utilization of the proceeds of replaced equipment.

To the Secretary of State, December 12, 1955:

Reference is made to letter dated September 15, 1955, from Mr. Edward B. Wilber, Acting Assistant Secretary-Controller, concerning that portion of our report of significant findings developed in our examination of the report submitted by the Secretary of State under section 1311 of the Supplemental Appropriation Act, 1955, 31 U. S. Code 200, which deals with a violation of the Anti-Deficiency Act, section 3670, Revised Statutes, as amended, 31 U. S. C. 665, at United States Mission to the North Atlantic Treaty Organization and European Regional Organization during fiscal year 1954. It is stated in the letter that corrective action has been taken and that it is considered inappropriate to submit a formal type of report pursuant to subsection (1) (2) of section 3670, Revised Statutes. The request is made that our Office accept the explanation of the manner in which the incident took place and has been corrected.

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The reported violation concerned an offer for the installation of automatic telephone equipment in the amount of \$40,975, accepted by the contracting officer on June 23, 1954. On that date the unobligated balance in the allotment to be charged was only \$20,161, against which \$20,000 of the contractual obligation was charged, the balance being expected to be made up from the proceeds of the sale of the telephone equipment to be replaced. Since obligations cannot be charged against anticipated proceeds from the sale of property, an overobligation of the allotment was incurred. The basis of your Department's view that it is considered inappropriate to submit a formal type of report required by the Anti-Deficiency Act is that the overobligation resulted from a misinterpretation by the officials concerned of General Accounting Office regulations and implementing Department of State procedures for the utilization of proceeds of sales of replaced equipment; that since the close of the fiscal year 1954, a combination of upward and downward adjustments in the obligations recorded against the allotment involved resulted in a net reduction of an amount sufficient to liquidate the obligation; and that had the regulations been correctly interpreted, an allotment increase could readily have been granted at the time the contract was entered into.

The allotment here involved, USRO allotment 4A-4237, appears to be an administrative subdivision of an apportionment authorized by Department regulations promulgated pursuant to subsection (g) of section 3679, Revised Statutes, subsection (h) of which provides:

No officer or employee of the United States shall authorize or create any obligation or make any expenditure (A) in excess of an apportionment or reapportionment, or (B) in excess of the amount permitted by regulations prescribed pursuant to subsection (g) of this section.

While the explanation furnished in the letter of September 15, 1955, indicates that extenuating circumstances attended the overobligation in question, the terms of the above-quoted subsection appear nevertheless to have been violated. In such instances, consideration of mitigating circumstances giving rise to an overobligation of funds is not a matter within the jurisdiction of our Office since subsection (i) (2) of section 3679, Revised Statutes, requires, in the case of violations of subsections (a), (b), or (h), that the head of the agency concerned immediately report to the President through the Director of the Bureau of the Budget, and to the Congress all pertinent facts together with a statement of the action taken thereon. Thus, it would appear the proper action would be to make such a report in which the extenuating circumstances and corrective action taken, of course, properly might be set forth.