

(1) Typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund.

(2) Preparation of a return or claim for refund of a person, or an officer, a general partner, or employee of a person, by whom the individual is regularly and continuously employed or in which the individual is a general partner.

(3) Preparation of a return or claim for refund for a trust or estate of which the person either is a fiduciary or is an officer, general partner, or employee of the fiduciary.

(4) Preparation of a claim for refund for a taxpayer in response to—

(i) A notice of deficiency issued to the taxpayer; or

(ii) A waiver of restriction after initiation of an audit of the taxpayer or another taxpayer if a determination in the audit of the other taxpayer affects, directly or indirectly, the liability of the taxpayer for tax under subtitle A.

For purposes of paragraph (d) (2) of this section, the employee of a corporation owning more than 50 percent of the voting power of another corporation, or the employee of a corporation more than 50 percent of the voting power of which is owned by another corporation, is considered the employee of the other corporation as well. For purposes of paragraph (d)(3) of this section, an estate, guardianship, conservatorship, committee, and any similar arrangement for a taxpayer under a legal disability (such as a minor, an incompetent, or an infirm individual) is considered a trust or estate.

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26 CFR Part 301

[T.D. 7676]

Allowable Disclosure or Use of Tax Return Information Under Section 7216

AGENCY: Internal Revenue Service, Treasury.

ACTION: Adoption of final regulations.

SUMMARY: This document provides final Regulations on Procedure and Administration relating to allowable disclosure or use of tax return information by tax return preparers under section 7216 of the Internal Revenue Code of 1954. These regulations provide necessary guidance to tax return preparers for compliance with the law.

DATE: These regulations are effective on January 1, 1972.

FOR FURTHER INFORMATION CONTACT:

Catherine Kelly Bouknight of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1974, the Federal Register published proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 7216 of the Internal Revenue Code of 1954 (39 FR 43312). The amendments in the appendix to the notice of proposed rulemaking expand and augment the list of disclosures or uses of tax return information which can be made without violating section 7216(a) and § 301.7216-1. There was no request for a public hearing, and none was held.

After consideration of all comments regarding the proposed amendments, this Treasury decision adopts the amendments, as set forth in full below, to the Regulations on Procedure and Administration. Section 301.7216-2(n), as proposed, has been revised to make clear that a disclosure made in a bona fide though erroneous belief that a crime has been committed is excepted from section 7216(a) and § 301.7216-1.

In addition, a further notice of proposed rulemaking is being published contemporaneously with this Treasury decision. This further notice contains two proposed amendments to certain regulations under section 7216, which regulations are the subject of this Treasury decision.

Explanation of Provisions

Section 7216(a) of the Code provides that, as a general rule, any tax return preparer who discloses or uses any tax return information other than for the specific purpose of preparing, or assisting in the preparation of, any tax return of the taxpayer by or for whom the information was made available to a tax return preparer shall be guilty of a misdemeanor. Section 7612(b)(3) provides that subsection (a) shall not apply to a disclosure or use of information which is permitted by regulations.

These amendments to § 301.7216-2 expand the list of disclosures or uses of tax return information to which the criminal sanction of section 7216(a) does not apply. The propriety of such disclosures or uses under ethical rules of conduct governing the practice of law or accountancy is beyond the scope of the proposed amendments.

Paragraph (c) of § 301.7216-2 is expanded to permit disclosure pursuant to an administrative order, demand, summons, or subpoena issued by any Federal regulatory agency.

Paragraph (e) of § 301.7216-2 expands allowable disclosure and use of tax return information by attorneys and accountants preparing tax returns. An attorney or accountant can use such information, or disclose it to another person in his firm who may use it, to render other legal or accounting services for the taxpayer, or, with the taxpayer's express or implied consent, make the information available to third parties. An attorney or accountant can take tax return information into account and act upon it, or disclose it to another person in his firm to take it into account and act upon it, while performing legal or accounting services for a client other than the taxpayer, where such information is or may be relevant to the services for such other client and its consideration by those performing the services is necessary to perform those services properly, but disclosure or use under this provision is limited to members or employees of the firm, unless such disclosure to an outsider is specifically excepted by another provision of § 301.7216-2 or § 301.7216-3.

Paragraph (n) of § 301.7216-2 permits disclosure of tax return information to Federal or State officials to inform them of activities which may constitute, or may have constituted, a violation of Federal or State criminal laws.

Comments

A number of commenters requested clarification in § 301.7216-2(e) of the scope of a term used in the existing regulations, "lawfully engaged in the practice of law or accountancy." The suggestion was made that disclosure by employees of law or accounting firms who are not themselves lawyers or accountants but who receive tax return information should expressly be excepted from section 7216(a). The reason that lawyers and accountants are excepted from the criminal sanctions of section 7216 is because they are bound by codes of professional conduct and legal strictures that do not apply to nonprofessional employees. Moreover, paragraph (e), by expressly permitting attorneys and accountants to disclose tax return information to employees of their firms, so that such employees may make specified use of such information, by implication permits these employees to disclose such information to an attorney or accountant of the firm.

Another suggestion was to limit "lawfully engaged" to include only those

licensed or registered with local authorities or, alternatively, to include only those admitted to practice before the Internal Revenue Service. This phrase as now used is intended to include only those licensed or registered locally and it is not considered necessary to state this expressly. Expanding the term to include tax return preparers admitted to Internal Revenue Service practice would except from section 7216 persons frequently not bound by professional canons of ethics or local laws, in violation of the rationale of the attorney/accountant exception.

Commenters also criticized another phrase in existing paragraph (e) as overly broad and vague. This paragraph provides that an accountant (and proposed paragraph (e) that an attorney as well) may make disclosure to third parties with the "implied consent" of the taxpayer. The term "implied consent" has been construed with adequate specificity in other areas of law and has sufficiently precise meaning to be commonly understood. This Treasury decision is not intended to alter these phrases, "lawfully engaged in the practice of law or accountancy" and "implied consent", as used in existing § 301.7216-2(e).

Other suggestions concerned the similar treatment of attorneys and accountants. A suggestion was made that the two professions should not be treated identically. While the attorney-client privilege has no exact counterpart in the accounting profession in most States, nonetheless State-licensed accountants are subject to sufficient professional discipline and legal restraint to be excepted with State-licensed attorneys from the sanctions of section 7216(a) and § 301.7216-1. Another proposal was that attorneys and State-licensed accountants should be completely excepted from the criminal provisions of section 7216(a) since professional ethics and State regulation insure "the highest standard of professional conduct." It is believed that this Treasury decision will not unduly hamper the conduct of these professionals and that they should not be completely excepted.

It was suggested that the proposed limit on disclosure pursuant to an administrative order, summons or subpoena in being limited to orders, etc., issued by a regulatory agency would probably exclude Internal Revenue Service orders, as well as other nonregulatory agency orders. This proposal has been taken into account in new proposed regulations under § 301.7216-2 contained in the notice of

proposed rulemaking published contemporaneously with this Treasury decision. New proposed paragraph (c) would broaden the types of administrative bodies whose orders for disclosure of tax return information will be excepted from the criminal sanction of section 7216(a).

One criticism made was that the proposed rules could easily be construed as mandating unethical conduct by permitting disclosure by tax return preparers notwithstanding confidential relationships and constitutional rights. Code section 7216 and regulations issued thereunder do not mandate but rather decriminalize certain disclosures and uses. The propriety of such action under other laws or under ethical rules of conduct governing the practice of law or accountancy is beyond the scope of the amendments.

With regard to proposed paragraph (n) of § 301.7216-2, concern was expressed that this paragraph might be construed to impose an affirmative duty to disclose the commission of a crime. It is again emphasized that these proposed amendments are merely exceptions to a criminal provision and are not intended to authorize conduct forbidden elsewhere.

Commenters also suggested with respect to paragraph (n) that disclosure made in the bona fide though mistaken belief that a crime has been committed should be excepted. Language has been added to this paragraph to clarify that such good faith disclosure in fact comes under the protection of paragraph (n).

Finally, it was observed that paragraph (n) on disclosure to Federal and State officials omits disclosure to local officials, although disclosure pursuant to the order of a local court is permissible under § 301.7216-2(c). This matter is a subject of the new proposed regulations under § 301.7216-2 contained in the notice of proposed rulemaking published contemporaneously with this Treasury decision.

Drafting Information

The principal author of these regulations is Catherine Kelly Bouknight of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended by revising § 301.7216-2 (c) and (e) and by adding a new paragraph (n) thereto, to read as follows:

§ 301.7216-2 Disclosure or use without formal consent of the taxpayer.

(c) *Disclosure pursuant to an order of a court or of a Federal regulatory agency.* The provisions of section 7216(a) and § 301.7216-1 do not apply to any disclosure of tax return information if such disclosure is made pursuant to any one of the following documents:

- (1) The order of any court of record, Federal, State, or local, or
- (2) An administrative order, demand, summons, or subpoena issued by any Federal regulatory agency in the performance of its duties.

Information must be clearly identified in the document in order to be disclosed under this paragraph (c).

(e) *Certain disclosure by attorneys and accountants.* The provisions of section 7216(a) and § 301.7216-1 do not apply to any disclosure of tax return information permitted by this paragraph (e).

(1) A tax return preparer who is lawfully engaged in the practice of law or accountancy and prepares a tax return for a taxpayer may use the tax return information of the taxpayer, or disclose such information to another employee or member of the preparer's law or accounting firm who may use it, to render other legal or accounting services to or for such taxpayer. Thus, for example, a lawyer who prepares a tax return for a taxpayer may use the tax return information of the taxpayer for, or in connection with, rendering legal services, such as estate planning or administration, or preparation of trial briefs or trust instruments, for the taxpayer or the estate of the taxpayer; or if another member of the same firm renders the other legal services for the taxpayer, the lawyer who prepared the tax return may disclose the tax return information to that other member for use in rendering those services for the taxpayer. In further illustration, an accountant who prepares a tax return for a taxpayer may use the tax return information, or disclose it to another member of the firm for use, for, or in connection with, the preparation of books of account, working papers, or accounting statements or reports to or for the taxpayer. Further, in the normal course of rendering such legal or accounting services to or for the

taxpayer, the attorney or accountant may, with the express or implied consent of the taxpayer, make such tax return information available to third parties, such as stockholders, management, suppliers, or lenders.

(2) A tax return preparer who is lawfully engaged in the practice of law or accountancy and prepares a tax return for a taxpayer may (i) take such tax return information into account, and may act upon it, in the course of performing legal or accounting services for a client other than the taxpayer or (ii) disclose such information to another employee or member of the preparer's law or accounting firm to enable that other employee or member to take the information into account, and act upon it, in the course of performing legal or accounting services for a client other than the taxpayer, when such information is or may be relevant to the subject matter of such legal or accounting services for the other client and its consideration by those performing the services is necessary for the proper performance by them of such services. In no event, however, may such tax return information be disclosed to a person who is not an employee or member of the law or accounting firm unless such disclosure is exempt from the application of section 7216(a) and § 301.7216-1 by reason of another provision, other than this paragraph, of § 301.7216-2 or § 301.7216-3.

(3) The application of this paragraph may be illustrated by the following examples:

Example (1). A, a member of an accounting firm, renders an opinion on a financial statement of M Corporation that is part of a registration statement filed with the Securities and Exchange Commission. After the filing of such registration statement, but before its effective date, B, a member of the same accounting firm, prepares an income tax return for N Corporation. In the course of preparing such income tax return, B discovers that N does business with M and concludes that information he is given by N should be considered by A to determine whether the financial statement reported on by A contains an untrue statement of material fact or omitted to state a material fact required to keep the statement from being misleading. B discloses to A the tax return information of N for this purpose. A determines that there is an omission of material fact and that an amended statement should be filed. A so advises M and the Securities and Exchange Commission. A explains that the omission was revealed as a result of confidential information which came to A's attention after the statement was filed, but A does not disclose the identity of the taxpayer or the tax return information itself. Section 7216(a) and § 301.7216-1 do not apply to the foregoing disclosure of N's tax return information by B to A and the use of such

information by A in advising M and the Securities and Exchange Commission of the necessity for filing an amended statement. Section 7216(a) and § 301.7216-1 would apply to a disclosure of N's tax return information to M or to the Securities and Exchange Commission unless such disclosure is exempt from the application of section 7216(a) and § 301.7216-1 by reason of another provision of either § 301.7216-2 or § 301.7216-3.

Example (2). A, a member of an accounting firm, is conducting an audit of M Corporation, and B, a member of the same accounting firm, prepares an income tax return for D, an officer of M. In the course of preparing such return, B obtains information from D indicating that D, pursuant to an arrangement with a supplier doing business with M, has been receiving from the supplier, a percentage of the amounts which the supplier invoices to M. B discloses this information to A who, acting upon it, searches in the course of the audit for indications of such a kickback scheme. As a result, A discovers information from audit sources which also, but independently, indicates the existence of such a scheme. Without revealing the tax return information A has received from B, A brings to the attention of officers of M the audit information indicating the existence of the kickback scheme. Section 7216(a) and § 301.7216-1 do not apply to the foregoing disclosure of D's tax return information by B to A, the use by A of such information in the course of the audit, and the disclosure by A to M of the audit information indicating the existence of the kickback scheme. See also § 301.7216-2(j). Section 7216(a) and § 301.7216-1 would apply to a disclosure to M, or to any other person not an employee or member of the accounting firm, of D's tax return information furnished to B.

* * * * *

(n) *Disclosure to report the commission of a crime.* The provisions of section 7216(a) and § 301.7216-1 do not apply to the disclosure of any tax return information to the proper Federal or State official in order, and to the extent necessary, to inform the official of activities which may constitute, or may have constituted, a violation of Federal or State criminal laws. In addition, such a disclosure made in the bona fide but mistaken belief that the activities constituted a violation of criminal law is not subject to section 7216(a) and § 301.7216-1.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: January 22, 1980.

Donald C. Lubick,
Assistant Secretary of the Treasury.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1416-7]

Illinois; Approval and Promulgation of Implementation Plans

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) announces today final rulemaking on revisions to the Illinois State Implementation Plan (SIP). These revisions were submitted to USEPA by the State to satisfy the requirements of part D of the Clean Air Act (Act). USEPA published a notice of proposed rulemaking on these revisions on July 2, 1979 (44 FR 38587) and a correction notice on September 20, 1979 (44 FR 54500). The notice of proposed rulemaking described the nature of the SIP revisions, discussed provisions which in USEPA's judgment did not comply with the requirements of the Act and requested comments from the State and public. Numerous public comments were received. In addition, on August 29, 1979, the State submitted additional information for inclusion in the SIP and clarified some of the SIP's provisions. Based on its review of the State's response and the public comments, USEPA takes final rulemaking action to approve, conditionally approve, and disapprove specific portions of the Illinois submittal as revisions to the federally approved Illinois State Implementation Plan. This Final Rulemaking action does not address the adequacy of State rules to control particulate emissions from the iron and steelmaking industry. These rules will be addressed in a separate Notice of Proposed Rulemaking.

EFFECTIVE DATE: This final rulemaking becomes effective on February 21, 1980. USEPA has determined that good cause exists for making these revisions immediately effective and deviating from the requirement of 5 U.S.C. Section 553(d) (the Administrative Procedures Act) that substantive rules be published thirty days before their effective date. By making this final rulemaking immediately effective, some of the restrictions on industrial growth contained in section 110(a)(2)(I) of the Clean Air Act will be lifted from the State of Illinois. These restrictions are imposed for failure to have a State Implementation Plan which meets the requirements of Part D after the final date for SIP approval specified in the

Act. USEPA has determined that the Illinois State implementation Plan on the whole, meets the requirements of Part D. Therefore, it would be contrary to the public interest to continue the restrictions on industrial growth for thirty days after the publication of this notice.

ADDRESSES: Copies of the SIP revision, public comments on the Notice of Proposed Rulemaking (44 FR 38587), and USEPA's evaluation and response to comments are available for inspection at the following addresses:

U.S. Environmental Protection Agency,
Region V Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.
U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Gary Gulezian, Acting Chief,
Regulatory Analysis Section, Air Programs Branch Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6053.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act), as amended in 1977, USEPA designated certain areas in each state as nonattainment with respect to National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP), sulfur dioxide (SO₂), carbon monoxide (CO), ozone (O₃), and nitrogen dioxide (NO₂).

Part D of the Act, added by the 1977 amendments, requires each state to revise its SIP to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary National Ambient Air Quality Standards by December 31, 1982, and in certain circumstances no later than December 31, 1987 for ozone and/or carbon monoxide. The requirements for an approvable SIP are described in a Federal Register notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

On April 3, 1979, the State of Illinois submitted a draft SIP to USEPA to satisfy the requirements of Part D. USEPA published a notice of proposed rulemaking on these draft revisions on July 2, 1979 (44 FR 38587) and a correction notice on September 20, 1979 (44 FR 54500). The notice of proposed rulemaking described the nature of the SIP revisions. The notice also specified

areas of the SIP submittal which in USEPA's judgment did not comply with the requirements of the Clean Air Act and needed either clarification or correction by the State. In its August 29, 1979 submittal, the State of Illinois submitted additional information for inclusion in the SIP and clarified some of the provisions in the submittal. In addition, USEPA received numerous public comments on the Illinois submittal and on USEPA's proposed action on it. Significant comments and USEPA's response to them are discussed where applicable below.

In the July 2, 1979 notice, USEPA indicated that the regulations in the State's submittal were preliminarily adopted by the Illinois Pollution Control Board (IPCB) and would be finally adopted after completion of necessary State administrative procedures. The notice of proposed rulemaking indicated that the nonregulatory portions of the SIP would not be adopted by the Illinois Environmental Protection Agency (Illinois EPA) until the completion of public hearings. USEPA stated that until all State administrative requirements were satisfied, it would not complete Federal rulemaking on the SIP revisions. USEPA also indicated that any substantive changes in the final SIP which were not discussed or anticipated in the Notice of Proposed Rulemaking would be addressed in a supplemental Notices of Proposed Rulemaking. On November 16, 1979, December 21, 1979, and January 25, 1980 USEPA received letters from the State which demonstrated that, with the exception of regulations relating to malfunctions, all regulations were finally adopted and that the Illinois EPA had adopted the nonregulatory portions of the SIP. USEPA's review of these finally enacted regulations indicates that changes were made in some of the regulations after the publication of the Notice of Proposed Rulemaking on July 2, 1979. USEPA takes no rulemaking action today in regard to the changed portions of the regulations. USEPA has reviewed the changes and has determined that deferring rulemaking on these changes does not alter USEPA's final determinations announced today. Changes were made in the following regulations.

Illinois Air Pollution Regulations 203(f)

a. An exemption has been added to Rule 203(f)(3)(A) which lifts control requirements from storage piles if the owner or operator of the pile proves that fugitive emissions from the pile do not cross the property line.

b. Rule 203(f)(3)(C) which restricted emissions from conveying operations to

10% opacity has been deleted in the final rule. Conveyors are now subject to the provisions of Rule 203(f)(3)(E).

Rules for Issuance of Permits to New or Modified Air Pollution Sources Affecting Nonattainment Areas

a. Section 4.11 contains new materials to include as allowable emissions "a reasonable estimate of emissions in excess of applicable standards during start-up, malfunctions, or breakdown".

b. A definition of "reconstruction" has been added to Section 4.7.

c. New Sections 5.1(a)(2)(ii) and 5.1(a)(2)(iii) are reserved by the State.

d. A procedure allowing external offsets is contained in Section 10.

Illinois Air Pollution Regulation 205

a. Rule 205(k)(1) has been changed so that an owner or operator satisfying the requirements of Rule 205(k)(1) (A) or (B) is exempt from all provisions of Rules 205(k) (2) and (3).

USEPA will solicit public comment on these changes in a Notice of Proposed Rulemaking to be published shortly.

This Federal Register notice addresses public comments in two parts: (1) General comments on the Illinois SIP and on the criteria used by USEPA to evaluate all SIPs; and (2) Comments on specific portions of the Illinois submittal and on USEPA's evaluation of specific portions of the SIP. The second part of this notice briefly identifies by pollutant or topic the deficiencies cited in the July 2, 1979 Federal Register notice, discusses both the State's response and the response of other commentators, and contains USEPA's response to comments and its final determinations.

USEPA's final determinations take one of three forms: approval, conditional approval, or disapproval. A discussion of conditional approval and its practical effect appears in the July 2, 1979 Federal Register (44 FR 38583) and in the November 23, 1979 Federal Register (44 FR 67182). The conditional approval requires the State to submit additional materials by specified deadlines negotiated between the State and the USEPA Regional Office. Schedules submitted by Illinois will be proposed for public comment in a Federal Register to be published shortly. Although public comment is solicited on the deadlines, and the deadlines may be changed in light of the comments, the state remains bound by its commitment to meet the proposed deadlines, unless they are changed. USEPA will follow the procedures described below when determining if requirements of conditional approval have been met:

1. When the State submits the required additional documentation,

USEPA will publish a notice in the **Federal Register** announcing receipt and availability of the material for public comment. The notice will also announce that the conditional approval is continuing pending USEPA's final action in the submission.

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

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

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

1. *Approval.*

a. Inspection and Maintenance.

b. Transportation Control Plans for the Springfield Area, the Rockford Area, the Rock Island-Quad Cities Area, and the Decatur, Champaign-Urbana, Bloomington-Normal Areas.

c. Commitment to Adopt Additional Emission Limitations Representing RACT for Source Categories covered in Future CTGs

d. Extensions until December 31, 1987 of the statutory attainment deadline for ozone and carbon monoxide in the Northeast Illinois Nonattainment Area and for ozone in the Illinois portion of the St. Louis Metropolitan Nonattainment area.

e. Particulate Nonattainment Demonstration Approach.

2. *Conditional Approval.*

a. Carbon Monoxide Control Strategy.

b. Nitrogen Dioxide Control Strategy.

c. Transportation Control Plans for Peoria Metropolitan Area, the Illinois Portion of the St. Louis Metropolitan Area, Northeastern Illinois (Chicago) Area.

d. Portions of Rule 205 and the Ozone Attainment Strategy.

e. Sulfur Dioxide Control Strategy.

f. Rule 203(f) and the Total Suspended Particulate Control Strategy.

g. New Source Review.

3. *Disapproval.*

a. Compliance Schedule in new Rule 205(j) for all emission sources subject to

Rule 205(b), as approved by USEPA May 31, 1972, which were required to be in compliance with old Rule 205(j) by December 31, 1973.

b. Use of equivalent methods in Rule 203(f) without review or approval. Any source utilizing an equivalent method must submit the operating program containing the equivalent method to USEPA as a SIP revision.

4. *No Action.*

a. General requirements of the Clean Air Act which are not Part D requirements (Sections 121, 126, 127, 128, 110(a)(2)(K) and Part C). Final rulemaking on these portions of the SIP will be in a separate **Federal Register** notice to be published shortly.

b. Illinois Iron and Steel Particulate Regulations. A notice of proposed rulemaking on these provisions will be published shortly in a separate **Federal Register** action.

c. Maintenance-Malfunction Regulations. Final Rulemaking will be taken by USEPA upon certification by the State that the rules are fully adopted and effective in Illinois.

d. Those portions of Rule 205(k), 203(f) and the Rules for Issuance of Permits to New or Modified Air Pollution Sources Affecting Nonattainment Areas which were identified above as containing changes made between the publication of the July 2, 1979 Notice of Proposed Rulemaking and this final rulemaking action.

5. *Final Action.*

a. On January 30, 1980 (45 FR 6786), USEPA completed final rulemaking on designation changes requested by the State in its April 3, 1979 submittal to USEPA. USEPA proposed rulemaking on these designation changes on July 2, 1979 (44 FR 38587) and corrected errors in the proposal on September 20, 1979 (44 FR 54500).

The following sections will discuss general and pollutant specific deficiencies in the Illinois SIP noted by USEPA in the July 2, 1979 Notice of Proposed Rulemaking, State and public comment in response to that Notice, and USEPA's final determinations and rulemaking actions.

National Comments and General Comments on the Illinois SIP

Comment and Response: One commentator submitted extensive comments which it requested be considered part of the record for each State plan. Each of the points raised by the commentator and USEPA's response follow. Although some of the issues raised are not relevant to provisions in Illinois' submission, USEPA is notifying the public of its response to these comments at this time.

1. The commentator asked that comments it has previously submitted on the Emission Offset Interpretative Ruling as revised on January 16, 1979 (44 FR 3274), be incorporated by reference as part of their comments in its response to comments on the Offset Ruling.

2. The commentator objected to general policy guidance issued by USEPA, on grounds that USEPA's guidance is more stringent than required by the Act. Such a general comment concerning USEPA's guidance is not relevant to USEPA's decision to approve or disapprove a SIP revision since that decision rests on whether the revision satisfies the requirements of Section 110(a)(2). However, USEPA has considered the comment and concluded that its guidance conforms to the statutory requirements.

3. The commentator noted that the recent court decision on USEPA's regulations for prevention of significant deterioration (PSD) of air quality affects USEPA's new source review (NSR) requirements for Part D plans as well. (The decision is *Alabama Power Co. v. Costle*, 13 ERC 1225 (D.C. Cir., June 18, 1979). In the commentator's view, the court's rulings on the definition of "source," "modification," and "potential to emit" should apply to Part D as well as PSD programs. In addition, the commentator believes that the court decision precludes USEPA from requiring Part D review of sources located in designated "clean" areas.

The preamble to the Emission Offset Interpretative Ruling, as revised January 16, 1979, explains that the interpretations in the Ruling of the terms "source," "major modification," and "potential to emit," and the areas in which NSR applies, govern State plans under Part D. (44 FR 3275 col. 3 through 3276 col. 1, January 16, 1979.) In proposed rules published in the **Federal Register** on September 5, 1979 (44 FR 51924), USEPA explained its views on how the *Alabama Power* decision affects NSR requirements for State Part D plans. The September 5, 1979 proposal addressed some of the issues raised by the commentator. To the extent necessary, USEPA will respond in greater detail to the commentators' concerns in its response to comments on the September 5, 1979, proposal and/or its response to comments on the Offset Ruling.

As part of the September 5, 1979 proposal, USEPA proposed regulations for Part D plans in section 40 CFR 51.18(j). USEPA also proposed to approve a SIP revision prior to the promulgation of final regulations if the SIP revision satisfies either existing USEPA requirements, or the proposed regulations.

USEPA proposed to approve State-submitted relaxations of previously-submitted SIPs prior to the promulgation of final regulations, so long as the revised SIP meets all proposed USEPA requirements. To the extent USEPA's final regulations are more stringent than the existing or proposed requirements, States will have nine months after the promulgation of final regulations to correct the SIP, as provided in Section 406(d) of the Act.

In some instances, USEPA's approval of a State's corrected NSR provisions (as revised to be consistent with USEPA's proposed or final regulations) may create the need for the State to revise its growth projections and provide for additional emission reductions. States will be allowed additional time for such revisions after the new NSR provisions are approved by USEPA.

4. The commentator questioned USEPA's alternative emission reduction options policy (the "bubble" policy). As the commentator noted, USEPA set forth its proposed bubble policy in a separate Federal Register publication. 44 FR 3720 (January 18, 1979). USEPA responded to the comments on the "bubble" approach in the final "bubble" policy statement. 44 FR 71780 (December 11, 1979).

5. The commentator questioned USEPA's requirement for a demonstration that application of all reasonably available control measures (RACM) would not result in attainment any faster than application of less than all RACM. In USEPA's view, the statutory deadline is that date by which attainment can be achieved as expeditiously as practicable. While there is no requirement to apply more RACM than is necessary for attainment, there is a requirement to apply controls which will insure attainment as soon as possible. Consequently, the State must select the mix of control measures that will achieve the standards most expeditiously, as well as assure reasonable further progress.

The commentator also suggested that all RACM may not be "practicable." By definition, RACM are only those measures which are reasonable. If a measure is impracticable, it would not constitute a reasonably available control measure.

6. The commentator found the discussion in the General Preamble of reasonably available control technology (RACT) for VOC sources covered by Control Technique Guidelines (CTGs) to be confusing in that it appeared to equate RACT with the guidance in the CTGs. USEPA did not intend to equate RACT with the CTGs. The CTGs provide recommendations to the States

for determining RACT, and serve as a "presumptive norm" for RACT, but are not intended to define RACT. Although USEPA believes its earlier guidance was clear on this point, the Agency has issued a supplement to the General Preamble clarifying the role of the CTGs in plan development. See 44 FR 53761 (September 17, 1979).

7. The commentator suggested that the revision of the ozone standard justified an extension of the schedule for submission of Part D plans. This issue has been addressed in the General Preamble, 44 FR 20377 (April 4, 1979).

8. The commentator questioned USEPA's authority to require States to consider transfers of technology from one source type to another as part of LAER determinations. USEPA's response to this comment will be included in its response to comments on the revised Emission Offset Interpretative Ruling.

9. The commentator suggested that if a State fails to submit a Part D plan, or the submitted plan is disapproved, USEPA must promulgate a plan under Section 110(c), which may include restriction on construction as provided in Section 110(a)(2)(I). In the commentator's view, the Section 110(a)(2)(I) restriction cannot be imposed without such a federal promulgation. USEPA has promulgated regulations which impose restrictions on construction on any nonattainment area for which a State fails to submit an approvable Part D plan. See 44 FR 38583 (July 2, 1979). Section 110(a)(2)(I) does not require a complete federally-promulgated SIP before the restrictions may go into effect.

Comment: Another commentator, a national environmental group, stated that the requirements for an adequate permit fee system (Section 110(a)(2)(K) of the Act), and proper composition of State boards (Sections 110(a)(2)(F)(vi) and 128 of the Act) must be satisfied to assure that permit programs for nonattainment areas are implemented successfully. Therefore, while expressing support for the concept of conditional approval, the commentators argued that USEPA must secure a State commitment to satisfy the permit fee and State board requirements before conditionally approving a plan under Part D. In those States that fail to correct the omission within the required time, the commentators urged that restrictions on construction under Section 110(a)(2)(I) of the Act must apply.

Response: To be fully approved under Section 110(a)(2) of the Act, a State plan must satisfy the requirements for State boards and permit fees for all areas, including nonattainment areas. Several States have adopted provisions

satisfying these requirements, and USEPA is working with other States to assist them in developing the required programs. However, USEPA does not believe these programs are needed to satisfy the requirements of Part D. Congress placed neither the permit fee nor the State board provision in Part D. While legislative history states that these provisions should apply in nonattainment areas, there is no legislative history indicating that they should be treated as Part D requirements. Therefore, USEPA does not believe that failure to satisfy these requirements, is grounds for conditional approval under Part D, or for application of the construction restriction under Section 110(a)(2)(I) of the Act.

One commenter, a steel company, submitted extensive comments on issues of Agency policy. The comments and Agency responses follow.

The commentator stated that EPA has no authority under the statute to consider "enforceability" by reviewing state provisions for "clarity and specificity." See General Preamble, 44 FR 20373 (April 4, 1979). Section 110 generally requires that a plan be enforceable. See Section 110 (a)(1), (a)(2)(D). Based on those requirements, EPA must determine whether a plan is, in fact, enforceable. The requirements for enforceability would not be satisfied by unclear or imprecise plan provisions. Vagueness as to regulatory requirements or applicability would make it difficult, if not impossible, to enforce regulations against specific sources.

The commentator also questioned EPA's authority to review plans for "stringency." EPA must review a plan to determine if it meets all requirements of the Act. In particular, EPA must review the state's overall control strategy to assure the entire plan ensures attainment and maintenance of standards as expeditiously as practicable. A plan cannot be disapproved if it is more stringent than necessary to achieve that goal.

The commentator challenged EPA's authority to "consider" relaxations or revocations of existing plan requirements and EPA's "continuity" policy. The Administrator has not precluded States from relaxing or revoking existing plan requirements if the new requirements ensure reasonable further progress and standard attainment as expeditiously as practicable. The statute, however, is clear that attainment must be achieved as expeditiously as practicable and that December 31, 1982, is the last permissible attainment date, not merely a statutory goal. Section 172(a)(1). As noted earlier in this preamble, Congress

in enacting the 1977 Amendments did not intend the 1982 attainment date to authorize relaxations or delays in compliance with old requirements. See 123 Cong. Rec. H 11958, (daily ed., November 1, 1977) (Remarks of Rep. Rogers), quoted *infra*. The Administrator therefore believes it would be inconsistent with the Congressional intent to permit relaxation or revocation of existing requirements. As discussed in General Preamble at 44 FR 20373-20374, (April 4, 1979) EPA's continuity policy reflects and is consistent with the Congressional intent to prevent avoidance of pre-existing plan requirements.

The commenter perceives a conflict between EPA's continuity policy and the Agency's policy to deny credit for emission reductions attributed to measures that cannot be implemented or enforced. The continuity policy is intended to prevent compliance date extensions for pre-existing requirements. It does not, however, disallow all relaxations of plan requirements. If a pre-existing regulation was demonstrated by the state to be unenforceable, the state would be required to develop new regulations to achieve attainment. New, less stringent regulations which achieve attainment would be acceptable as long as the state does not extend the compliance date beyond the date in the existing plan. In addition, the state could not rely on emission reductions due to the old unenforceable regulation. If a state demonstrated that a regulation was unenforceable, EPA would, on a case-by-case basis, permit the state to revoke the old regulation from its plan. At the same time, the state would be required to develop a new mix of regulations to attain and maintain standards as expeditiously as practicable. Permitting revocation of unenforceable regulations is consistent with EPA's policy to permit revocation of old regulations that are incompatible with new, more stringent requirements. See 44 FR 20374, April 4, 1979.

A state is permitted to submit any mix of emission limitations that will achieve reasonable further progress and attainment as expeditiously as practicable even if the mix includes regulations that may currently be economically and technologically infeasible. EPA could not disapprove these regulations on grounds of economic and technological feasibility. EPA may, however, find that full implementation of a regulation will not result in the amount of emission reductions claimed by a State. In such cases, EPA must limit a State's credit for

emission reductions to those reductions which can be achieved if the regulation is fully implemented. In some cases, EPA may deny emission reductions credit because enforcement of a regulation is impracticable or impossible. In either situation, EPA would be denying credit because the state had misjudged emission reductions available through a regulation, and not because the regulation was technologically or economically infeasible. There is no inconsistency between the continuity policy and the Agency's obligation to insure that a state's attainment demonstration is realistic.

The commenter questions EPA's authority to establish "mandatory policies" for a state's preconstruction review program. As indicated in the General Preamble, 44 FR 20378-80, (April 4, 1979), EPA believes these policies are required by and reflect the statutory requirements in Sections 172 and 173 and the Agency's revised Emission Offset Interpretative Ruling.

The commenter also argues that EPA's policy of conditional approval is not sanctioned by the Clean Air Act. The commenter believes that EPA must promulgate a federal SIP and comply with procedural requirements for such promulgation if the Administrator finds a state plan inadequate. The commenter claims that conditional approval circumvents the procedural safeguards of Section 307 of the Act and coerces state modification of the plan through threat of disapproval.

In the Administrator's view, conditional approval provides procedural safeguards equivalent to those available when the Administrator promulgates a plan. A discussion of conditional approval and its practical effect appears in supplements to the General Preamble published on July 2, 1979 (44 FR 38583) and November 23, 1979 (44 FR 67182). In the case of Illinois, for example, the Administrator has proposed to conditionally approve certain provisions. The commenter has had an opportunity to submit extensive written comments and receive EPA's response. Today's final conditional approval may be challenged in the appropriate United States Court of Appeals within 60 days. The rulemaking and judicial review procedures thus provide opportunities for comment and review similar to those provided for promulgations under Section 307(d).

Conditional approval is also consistent with the Administrator's obligation under Section 110(c)(1)(C). That subsection requires the Administrator to promulgate regulations for a state if "the state fails, within 60

days after notification by the Administrator or such later period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H)." When the Administrator proposes conditional approval, he is essentially notifying the state that further revisions are required to make the plan or regulations fully approvable. If the state fails to satisfy the Administrator's conditions, the Administrator will disapprove the plan or regulations and may then promulgate regulations to correct the deficiency. The state is simply offered the option of correcting the inadequacies itself.

The commenter questioned what rules are in effect if a plan or regulation is conditionally approved. EPA intends that the conditionally approved requirements be effective unless the conditional approval is withdrawn for failure to meet the conditions. The commenter argues that sources are prejudiced by this result, since they are required to comply with rules that may be significantly altered. Because conditional approval is applicable only to plans or regulations with relatively minor deficiencies, it is highly improbable that conditionally approved provisions will be substantially changed. In addition, notices of proposed and final conditional approval, such as today's final action, provide adequate notice to sources of the requirements they will ultimately have to meet if the conditions are met.

The Commenter commented that USEPA has failed to wait for a legally adopted revised plan to be submitted by Illinois before publishing a Notice of Proposed Rulemaking, has failed to adhere to the requirements of Section 110 of the Act in reviewing the revised plan, and has failed to give interested persons an opportunity to review and comment on a legally adopted revised plan.

As stated elsewhere in this Notice, any significant changes made in the SIP between the submittal of the draft on April 25, 1979 and the submittal of the final SIP during the comment period on the Notice of Proposed Rulemaking have been removed from the final SIP and will be the subject of a separate Notice of Proposed Rulemaking. With the exception of these changes, the final regulations were substantially the same as the draft regulations addressed in the Notice of Proposed Rulemaking. Therefore, an adequate opportunity has been provided for interested persons to comment on the plan and its regulations

which are the subject of today's final rulemaking.

This procedure permits interested persons to comment on the plan while expediting the rulemaking process. By using these procedures, USEPA also expedites the removal of the growth restrictions contained in section 110(a)(2)(I) of the Act while assuring attainment of the National Ambient Air Quality Standards.

Plan Requirements for Nonattainment Areas

In addition to the general requirements applicable to all State Implementation Plan revisions, the revised plan must satisfy the requirements of Part D of the Act. In the July 2, 1979 Notice of Proposed Rulemaking, USEPA indicated that the proposed revision to the Illinois SIP did not meet the requirements of section 172(b)(9) of the Act because it did not include an identification and analysis of the air quality, health, welfare, economic, energy, and social effects of the plan provisions chosen, the alternatives considered, and a summary of the public comment on the analysis. USEPA believes that the State has satisfied this requirement through discussions in the original SIP submittal, the submittal of supplemental information identifying and analyzing the impact areas, and the submittal of a summary of public comments.

Total Suspended Particulates

Part D of the Clean Air Act requires State Implementation Plans to include strategies and regulations adequate to attain the National Ambient Air Quality Standards as expeditiously as practicable but not later than December 31, 1982, and, in the interim, to provide reasonable further progress toward attainment through the application of RACT. Where attainment cannot be demonstrated despite the application of reasonably available control technology to traditional sources of particulate matter, USEPA will accept as a basis for approval a commitment by the State to conduct additional studies on the causes for particulate non-attainment, including the degree to which non-traditional area sources of particulate matter affect air quality and to develop and to submit to USEPA additional enforceable strategies adequate to demonstrate attainment of the primary standards by the statutory attainment date.

The Illinois particulate control strategy relies on existing regulations and new regulations which deal with particulate emissions from iron and steel mills, from industrially related fugitive dust, and from malfunctions. As

discussed below, USEPA is conditionally approving Rule 203(f) relating to fugitive dust as part of the federally approved SIP and is deferring action on Rules 101, 103, and 105 relating to malfunctions. USEPA will propose rulemaking on the adequacy of regulations to control particulate emissions from iron and steel sources in a separate Federal Register notice.

USEPA has determined that with the exception of iron and steel sources Rule 203 represents RACT for traditional sources of particulates. As discussed above, USEPA makes no determination at this time on the adequacy of controls on iron and steel sources. In the July 2, 1979 notice of proposed rulemaking, USEPA stated its opinion that the Illinois SIP submittal did not adequately document that the level of control technology for sources covered under the process weight regulations of Rules 203(a) and (b) represented RACT. In response, the State submitted the results of a study demonstrating that the degree of control required by Rules 203(a) and (b) is not only nearly equal to that which would be obtained by following USEPA RACT guidance but also is more cost effective. In addition, one industry submitted the comment that the process weight regulations of Rules 203(a) and (b) require the application of RACT pursuant to USEPA's own regulations at 40 CFR Part 51 Appendix B. Although USEPA believes that Rules 203(a) and (b) represent RACT, it does not conclude this because of the examples contained in Appendix B. USEPA bases its determination on the information submitted by the State.

Despite the application of regulations representing RACT for traditional sources of particulate matter, analysis conducted by Illinois demonstrates that attainment of the primary particulate standard will not be achieved by December 31, 1982. Therefore, the Illinois SIP contains a commitment to conduct studies on non-traditional particulate sources, propose new regulations, and require compliance with the new regulations no later than December 31, 1982. USEPA proposed to approve this commitment if the State submitted a more detailed schedule for the completion of the studies and the adoption of new regulations.

The State's August 29, 1979 submittal satisfactorily outlined a detailed plan to study the causes of particulate nonattainment and to develop strategies to attain and maintain the particulate standards. The studies will focus on the ambient impact of non-traditional sources of particulates, methods for controlling non-traditional sources, and

the extent to which traditional sources with RACT controls contribute to particulate nonattainment. The State has further committed itself to complete an attainment strategy based on the studies by December 31, 1981 and to propose any additional measures necessary to attain and maintain the particulate standards to the Illinois Pollution Control Board by December 31, 1981.

Because the State has demonstrated that attainment is not possible despite the application of RACT to traditional sources of particulates and has made a satisfactory commitment to study the causes of particulate nonattainment and to adopt additional regulations to achieve attainment, USEPA approves the State's approach to demonstrating attainment and conditionally approves the overall Illinois particulate SIP with the exception of the portions of it addressing iron and steel sources. Therefore, the growth prohibition of Section 110(a)(2)(I) of the Act continues to apply only in those particulate nonattainment areas containing iron and steel sources. Specific conditions which must be satisfied by the State are outlined below in the discussion of each regulation.

The July 2, 1979 Notice of Proposed Rulemaking identified deficiencies in the Illinois attainment demonstration which USEPA stated must either be clarified or be corrected in the attainment demonstration to be submitted by December 31, 1981. USEPA stated that, in its opinion, the attainment demonstration claimed emission reduction credits for strategies either not yet included in the SIP or not clearly enforceable under the SIP. USEPA cited two examples. One example was the lack of enforceability of the proposed fugitive emission regulation. USEPA addresses this issue in the discussion below on Rule 203(f). A second example was the claiming of emission reduction credits for area source controls when regulations to control non-traditional area sources have not been developed. In the State's response to this deficiency, Illinois identified the basis for emission reduction credits included in the SIP for nontraditional area sources. The State noted that the studies it has committed itself to perform will better define non-traditional area source emissions so that enforceable, control strategies can be included in the SIP. USEPA believes that since a demonstration showing attainment will not be submitted until December 31, 1981, this issue need not be further resolved at this time. When the State has completed the studies and

promulgated appropriate regulations, USEPA and the public will have the opportunity to evaluate the acceptability of emission reduction credits claimed in the final attainment demonstration.

Another deficiency identified by USEPA in the July 2, 1979 Federal Register notice was that the attainment demonstration did not address the impact on ambient air quality of Illinois Pollution Control Board variances. The State's August 29, 1979 submittal explained how the SIP addressed the variances. According to the State, the modeling analysis accounted for variances by considering all sources at their actual emission rates during the base year. Therefore, sources with variances were analyzed as they were actually operating in the base year, (i.e. with a variance). The State notes that analyses conducted for 1982, 1985 and 1995 assumed that each source was operating in compliance with existing air quality regulations. These analyses further assumed that there were no variances since, with one exception, all current variances granted by the State will have expired prior to 1982. The State concludes that all future variances granted by the State will be addressed in the annual reasonable further progress submittals to USEPA.

On this issue, one industrial commentator argues that pursuant to "Train v. NRDC", 421 U.S. 60 (1975), where variances are pre-attainment date variances, they need not be considered by a State in developing its attainment strategy since reductions will occur in the interim under the plan as a whole, and the individual variances call for additional pre-attainment date reductions. USEPA disagrees with the commentator's interpretation of "Train v. NRDC". Although that case dealt with the validity of a variance provision insofar as it authorized variances effective before an attainment date, it neither stated that variances need not be considered by the State in developing its strategy to attain the standards nor distinguished between pre- and post-attainment periods. The Court held that the revision mechanism of the Clean Air Act is available for the approval of those variances which do not compromise the basic statutory mandate that the national ambient air quality standards be attained within the statutory timetable and maintained thereafter. In order to make this determination, the variances must be accounted for in the attainment demonstration.

USEPA believes that the State has satisfactorily clarified how variances

were included in the preliminary attainment demonstration.

In accordance with Section 110(l) and USEPA regulations, any variances granted by the State must be submitted as SIP revisions.

Fugitive Particulate Emission Control Regulations

Fugitive particulate emissions from industrial sources are regulated by Rule 203(f) of the Illinois Air Pollution Control Regulations. In the July 2, 1979 Notice of Proposed Rulemaking, USEPA identified seven areas of Rule 203(f) which, in USEPA's judgment, were deficient. The following discussion identifies the deficiency, summarizes the State's response, discusses any significant public comments, and contains USEPA's response to comments and its final determination.

1. Rule 203(f) requires sources to operate under the provisions of an operating program prepared by the source. The program may employ alternative methods of control for fugitive particulates as long as the alternative is equivalent to the controls specified in the regulation. Although the operating programs must be submitted to the State for review, the regulation does not provide for approval or disapproval of the operating programs by the State. Consequently, USEPA questioned whether these programs were enforceable emission limitations and whether any air quality demonstration taking credit for the impact of this regulation would significantly over-estimate emission reductions.

State Response: The State indicated that the rule is enforceable since failure to develop and follow an operating program "designed to significantly reduce fugitive particulate emissions" is a violation of the Illinois Environmental Protection Act and of Rule 203(f)(3)(F). Therefore, according to the State, although the specific details of the operating program cannot be approved by the State, the use of a program which significantly reduces particulate emissions is an enforceable requirement in Illinois.

Public Comments: Two utilities and two companies submitted comments on this issue. One utility urged USEPA to retain the flexibility of the rule which allows each source to prepare its own program. Another utility commented that an operating program should be deemed effective "unless it produces violations at an unacceptable frequency." One industrial comment echoed the State's response that the regulations already contain an enforcement mechanism in the

requirements that each source prepare and follow an operating program. The industry stated that failure of a source to implement its operating program is a violation of the regulation. The industry further stated that Illinois is entitled to the emission reduction credit claimed for implementation of fugitive particulate emission control from industrial sources and that denying this credit violates the spirit of the Supreme Court's ruling in "Train v. NRDC", 421 U.S. 60 (1975). Citing USEPA's Oil Pollution Prevention Regulations as an example of operating programs which do not require approval, another industry argues that the fugitive dust operating programs do not require approval by the State.

USEPA Response: With one exception, USEPA concurs with the State and the commentators that Rule 203(f) contains an adequate enforcement mechanism. In addition of the substantive criteria for the control of fugitive emissions, Rule 203(f) contains provisions allowing sources to control fugitive emissions through "equivalent methods" incorporated into a source's operating program. These equivalent methods, as part of a source's operating program, are not subject to State approval or disapproval. Therefore, although the State and USEPA have approved the substantive requirements of the regulation which will be contained in individual operating permits, the State and USEPA do not have an opportunity to determine whether an equivalent method of control represents RACT. This is unacceptable under the requirements of Section 172 of the Clean Air Act. Therefore, USEPA approves Rule 203(f) as part of the federally approved Illinois SIP but does not approve of the use of equivalent methods which have not been approved by USEPA. Any source utilizing an equivalent method must submit the operating program containing the equivalent method to USEPA as a SIP revision in order to be in compliance with the federally approved SIP.

In response to the comment that Illinois is entitled to emission reduction credit for fugitive particulate emission control, USEPA references its response above on the Illinois attainment demonstration. USEPA and the public can comment on the acceptability of claimed emission reduction credits when the State submits its final attainment demonstrations.

2. Rule 203(f) does not apply to all particulate primary nonattainment areas. Illinois stated in its SIP submittal that the rule applies to those primary nonattainment areas with existing major

sources of fugitive particulate matter. USEPA noted that this was acceptable if the rule included a provision to require controls on new fugitive particulate sources which locate in a nonattainment county not specifically covered by this rule.

State Response: According to the State, although Rule 203(f) does not apply to industrial sources of fugitive particulate matter locating in nonattainment areas not listed in the Rule, all sources locating in nonattainment areas are regulated by the "Rules for Issuance of Permits to New or Modified Air Pollution Sources Affecting Nonattainment Areas".

Therefore, any new, major fugitive source is required to install constant emissions controls so that the lowest achievable emission rate results. The State believes that this requirement is more stringent than the emission standards imposed by Rule 203(f).

USEPA Response: Based on the State's response and the absence of any public comments on this issue, USEPA believes that the State has satisfactorily addressed USEPA's concern that new fugitive sources locating in nonattainment areas will be adequately controlled.

3. Rule 203(f) exempts sources from control requirements if emissions from storage piles, conveyor loading operations and access areas surrounding storage piles are less than 50 tons per year. In the Notice of Proposed Rulemaking, USEPA questioned whether this represented RACT for these source categories.

State Response: The State of Illinois has made a commitment to conduct an analysis of the potential air quality impact from storage piles with uncontrolled emissions of less than 50 tons/year. According to the State, this analysis will consist of the development of a technical support document containing a comprehensive emissions inventory of these sources and an assessment of their impact on nonattainment problems. If this analysis indicates that these sources have a significant impact on air quality, the State will submit regulations to the Illinois Pollution Control Board by December 30, 1980 requiring reasonably available control technology on these sources.

Public Comments: One industry commented that USEPA's concern over the exemption from controls of storage piles ignores the Supreme Court's interpretation of USEPA's limited role in reviewing state implementation plans set out in "Train v. NRDC", 421 U.S. 60 (1975). The commentator states that it is Illinois' right to select whatever mix of

controls it chooses so long as the result is attainment. According to the commentator, it is USEPA's duty to accept the mix.

USEPA Response: USEPA does not disagree with the industrial commentator's statement that, within certain statutory limits, it is the State's right to select the mix of strategies so long as the result is attainment. USEPA notes, however, that the State of Illinois has not demonstrated that the mix of strategies it has selected result in attainment. Therefore, the comment is inappropriate. USEPA discusses the State's particulate attainment demonstration elsewhere in this Notice.

Based on the State's commitment and schedule, USEPA conditionally approves the exemption from controls for storage piles, conveyor loading operations, and access areas surrounding storage piles in Rule 203(f).

USEPA believes that the commitment to submit any necessary regulations to the IPCB is an adequate commitment by the State. USEPA recognizes that the State cannot legally prejudice the outcome of statutorily mandated regulatory proceedings. Nonetheless, in order to guarantee that the deficiencies are adequately addressed and that the plan is adequate to satisfy the requirements of the Act, USEPA imposes the additional condition that the regulations be finally promulgated by the State and submitted to USEPA by December 31, 1981.

In establishing the date by which any necessary regulations must be promulgated, USEPA has taken into consideration the complex IPCB rulemaking procedures which require technical as well as economic hearings and findings on all rulemaking actions. A notice soliciting public comment on the acceptability of this schedule will appear in a separate Notice of Proposed Rulemaking to be published shortly.

4. USEPA indicated in the Notice of Proposed Rulemaking that the SIP must include an acceptable method for determining potential emissions from storage piles.

State Response: The State discussed the use of emission factors in determining potential emissions. The State indicated that Illinois Air Pollution Regulation 108 permits the use of standard emission factors as a method of calculating emission rates. The State adds that these emission factors have been used since 1972 to determine the applicability of regulations and the compliance status of sources. The State has committed itself to utilize emission factors and to promulgate administrative rules interpreting Rule 108 as it applies to fugitive particulate

emissions. The State made a commitment to promulgate these rules by July 1, 1980.

Public Comments: One commentator urged that emission factors be used to determine compliance with emission limitations for storage piles and noted that the method for determining compliance should not be incorporated in the rule since the methods for determining compliance are being continually updated. Another commentator claims that the determination of an acceptable method of determining potential emissions from storage piles is "one of those myriad details which must be left to the reasoned judgment of the State and emission source owners and operators". This commentator believes that such a determination is beyond USEPA's jurisdiction under section 110(a)(2) of the Act.

USEPA Response: USEPA believes that the State's clarification that emission factors will be used to determine potential emissions from storage piles and the State's commitment to promulgate administrative rules interpreting Rule 108 as it applies to fugitive particulate emissions satisfactorily address USEPA's concern. USEPA recognizes that emission factors are the only practical method for determining potential emissions from storage piles. Therefore, USEPA approves the use of this method on the condition that the State promulgate and submit to USEPA administrative rules interpreting Rule 108 as it applies to fugitive particulate emissions by July 1, 1980. A notice soliciting public comment on the acceptability of this schedule appears elsewhere in today's Federal Register.

In response to the commentator claiming that the determination of an acceptable method for measuring potential emissions is beyond USEPA's jurisdiction, USEPA agrees that it is the State's right to choose a method. Because the State had not identified such a method in the SIP submittal, USEPA's concern was with the enforceability of the rule. This is a legitimate USEPA concern pursuant to section 110(a)(2) of the Act. USEPA addresses the issue of enforceability elsewhere in this notice.

5. According to USEPA, the technology specified in Rule 203(f)(3) did not include enclosures and particulate collection equipment as control options. USEPA asked that the State submit additional information demonstrating that these control measures were considered in determining RACT for all sources. In addition, USEPA asked that data be submitted quantifying the

emission reductions to be obtained through these provisions.

State Response: The State responded to this issue stating that enclosure and particulate collection equipment were considered in determining RACT for all sources and indicating the part of the SIP submittal addressing these control options. According to the State, enclosure and particulate collection equipment can be used as "equivalent methods" under Rule 203.

Public Comments: Two industries submitted comments indicating that the Illinois Pollution Control Board considered enclosure and particulate collection equipment as controls and determined that these methods were more stringent than RACT. One commentator stated that the rule does not preclude the use of these controls as "equivalent methods." The other commentator stated that USEPA is neither legally competent to dictate its own notions of RACT nor is it entitled to demand that the States provide evidence that particular control technologies were considered in formulating the SIPs.

USEPA Response: USEPA believes that the State has satisfactorily responded to USEPA's concern by demonstrating that these control methods were considered in determining RACT and that they are available to sources as "equivalent methods". USEPA strongly disagrees with the commentator objecting to USEPA's involvement with RACT determinations. Under the Clean Air Act, the primary responsibility for determining RACT falls to the local and State agencies as part of the development of the SIP. Section 172(b)(2) of the Act, however, requires that plans for nonattainment areas provide for the implementation of all reasonably available control measures as expeditiously as practicable. In reviewing a SIP revision to determine its adequacy, USEPA may review the provisions in the State plan to determine if they represent RACT.

6. Rule 203(f) does not contain a method for determining compliance of most processing operations with the operating programs required by the regulation.

State Response: The State did not respond to this issue.

Public Comments: Two steel sources commented on this issue. One commentator cites several portions of Rule 203(f) which it believes provide methods for determining compliance. The commentator cites Rule 203(f)(1) which contains a method for an observer to visually determine if fugitive emissions are crossing property lines; Rule 203(f)(3) which requires treatment

programs for specified sources; and Rule 203(f)(4) which establishes specific emission limitations on collection equipment operated pursuant to Rule 203(f)(3). This commentator notes further that testimony before the Illinois Pollution Control Board demonstrated that there is no general correlation between mass emission rate and opacity so that the use of opacity as a measuring device is totally inaccurate. The other commentator states that the IPCB considered and rejected opacity limitations after determining that they were technically infeasible. In order to insure enforcement of the regulations, the commentator states the Board promulgated the operating program requirement. The commentator adds that USEPA's conclusion that fugitive particulate regulations lacking opacity limitations are not enforceable simply defies logic and is illegal.

USEPA Response: USEPA agrees with the commentators that the specific treatment requirements of Rule 203(f)(3) are enforceable. As discussed above, however, any source utilizing an equivalent method must submit that method to USEPA as a SIP revision in order to comply with the federally approved SIP. Therefore, USEPA has reconsidered this issue and believes that the Illinois SIP does contain a method for determining compliance for process operations.

USEPA is responding, however, to other comments made by the two steel sources. USEPA does not believe that Rule 203(f)(1) is an effective method of determining compliance with the specific provisions of operating programs because it is not possible to relate specific control measures for one or more sources at a plant with visual observations of dust crossing a property line. USEPA disagrees with the comment suggesting that USEPA "concluded" that fugitive particulate regulations lacking opacity limitations are not enforceable. USEPA reached no such conclusion. In the Notice of Proposed Rulemaking, USEPA stated that the rule must contain either acceptable visible emission requirements or an acceptable substitute for measuring compliance.

7. Rule 203 must contain provisions to control particulate matter generated inside enclosed structures and emitted to the ambient air.

State Response: The State did not respond to this issue.

Public Comments: One industry indicated that specific regulations on processes taking place inside buildings are unnecessary and redundant because Rule 203(f)(1) is adequate to control all fugitive emissions crossing property lines. Another commentator argues that

this issue is clearly outside the jurisdiction of USEPA pursuant to section 110(a)(2) of the Act.

USEPA Response: Although the State did not respond specifically to this issue, USEPA believes that the State's use of emission factors pursuant to Rule 108 provides a satisfactory method for determining emissions from enclosed structures. The use of emission factors is discussed above under item 4. In addition, USEPA believes that the opacity limitations in federally approved Illinois Rule 202 can be used to restrict emissions from these sources. Finally, iron and steel sources constitute the most significant sources of emissions from buildings. As discussed above, USEPA will address the proposed rule covering these sources in a future Notice of Proposed Rulemaking.

In response to the public commentators, USEPA notes that USEPA does not consider Rule 203(f)(1) containing the property line limit provision an effective regulation. USEPA discusses this provision in depth under item 6. USEPA cannot respond fully to the statements by the other commentator since the commentator does not explain why this issue is "clearly outside" USEPA's jurisdiction. USEPA believes that all emissions into the ambient air are within its statutory purview.

USEPA Final Determination: Based on the corrections and clarifications made by the State and on the commitments to make additional corrections, USEPA conditionally approves Rule 203(f) as part of the federally approved SIP. USEPA takes no action on two changes made in the rule between USEPA's Notice of Proposed Rulemaking and this final rulemaking action. As discussed above, USEPA believes that approval or disapproval of these changes will not alter the outcome of this rulemaking. Public comment on the changes will be solicited in a separate Notice of Proposed Rulemaking to be issued shortly.

Maintenance-Malfunction

In its July 2, 1979 notice, USEPA proposed to approve revisions to Rules 101, 103, and 105 relating to malfunctions. The State, however, has not yet finalized these rules. Therefore, USEPA cannot take action to approve or disapprove these regulations at this time. Final Rulemaking will occur upon certification by the State that the rules are adopted and effective in Illinois. Although USEPA expects the State to finalize and submit those regulations as part of its particulate control strategy, failure to do so does not prevent approval of the Part D particulate SIP.

Sulfur Dioxide

In the July 2, 1979 notice, USEPA proposed to approve the Illinois Part D sulfur dioxide SIP upon the condition that the State of Illinois corrected deficiencies in the air quality modeling analysis for an area near Pekin, Illinois. In a letter dated January 18, 1980, the Illinois EPA made a commitment to remodel the Pekin area and, if necessary, propose additional regulations to the Illinois Pollution Control Board (IPCB) by September 1980 to ensure attainment and maintenance of the NAAQS. Therefore, USEPA conditionally approves the Illinois Part D sulfur dioxide SIP. USEPA believes that the State's commitment to submit any necessary regulations to the IPCB is adequate. USEPA recognizes that the State cannot legally prejudice the outcome of statutorily mandated regulatory proceedings. Nonetheless, in order to guarantee that the deficiencies are adequately addressed and that the plan is adequate to satisfy the requirements of the Act, USEPA imposes the additional condition that any necessary regulations be finally promulgated by the State and submitted to USEPA by September 30, 1981.

In establishing the date by which necessary regulations must be promulgated, USEPA has taken into consideration the complex IPCB rulemaking procedures which require technical as well as economic hearings and findings on all rulemaking actions. A notice soliciting public comment on the acceptability of this schedule will appear in a separate Notice of Proposed Rulemaking to be published shortly.

Ozone

An adequate State Implementation Plan for ozone requires sufficient controls on the emission of volatile organic compounds (VOC) from stationary and mobile sources to provide for the attainment of the standards by December 31, 1982. In cases where attainment by 1982 cannot be demonstrated despite the application of all reasonably available control measures, extensions of the attainment date may be granted through December 31, 1987. Pursuant to section 172(b)(11) of the Act, a SIP which provides for attainment of the ozone standard after December 31, 1982 must contain a specific schedule for the implementation of a vehicle emission control inspection and maintenance program (I/M) and establish a program which requires an analysis of alternatives prior to the issuance of any permit for construction or modification of a major emitting facility. As discussed below, USEPA has

determined that the Illinois' controls on stationary sources of VOC and specified transportation control plans are conditionally approvable. USEPA has also determined that the vehicle inspection and maintenance program and specified transportation control plans are approvable. Illinois has satisfied the requirement for a program requiring analysis of alternatives in a provision of its new source review rules.

Hydrocarbons From Stationary Sources

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

Where state regulations are not supported by the information in the CTGs, the state must provide an adequate demonstration that its regulations represent RACT, or amend the regulations to be consistent with the information in the CTGs. An explanation of CTGs and their practical effect is contained in a September 17, 1979 supplement (44 FR 53761) to the General Preamble.

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

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

In addition, by each subsequent January beginning January 1, 1981,

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

The Illinois SIP includes a provision which exempts methylene chloride from controls. This volatile organic compound, while not appreciably affecting ambient ozone levels, is potentially harmful. Methylene chloride has been identified as mutagenic in bacterial and mammalian cell test systems, a circumstance which raises the possibility of human mutagenicity and/or carcinogenicity. USEPA is concerned that the State has chosen this course of action without full consideration of the total environmental and health implications. USEPA will not disapprove the State's SIP submittal if the State chooses to maintain this exemption. USEPA is, however, concerned that this policy not be interpreted as encouraging the increased use of this compound or compliance by substitution. USEPA does not endorse such approaches. Furthermore, State officials and sources should be advised that there is a strong possibility of future regulatory action to control these compounds. Sources which choose to comply by substitution may well be required to install control systems as a consequence of these future regulatory actions.

Statewide stationary source control representing RACT for fifteen source categories are contained in Rule 205 of the Illinois Air Pollution Regulations. In the July 2, 1979 notice of proposed rulemaking, USEPA noted five areas of the rule which in USEPA's judgment were deficient. If the State made a commitment to correct the deficiencies on a schedule to be negotiated between the State and the USEPA Regional Office, USEPA proposed conditional approval of the rule. The following discussion identifies the deficiencies, summarizes the State's response and any public comments, and contains USEPA's response and final determination.

1. Rule 205(k) exempts from controls solvent cleaners which emit less than 15 lbs. per day or 3 lbs. per hour of volatile organic compounds. This broad exemption is neither technically supported in the CTGs nor technically supported by the State as representing RACT.

State Response: The State of Illinois has made a commitment to complete a study which demonstrates that this

exemption represents RACT for existing sources in the solvent metal cleaning category, to submit the results of this study to USEPA, and, if necessary, to prepare draft regulations which represent RACT for submittal to the Illinois Pollution Control Board. The State has made a commitment to fulfill these conditions within nine months of the effective date of this rulemaking.

USEPA Response and Final

Determination: Based on this commitment and schedule, USEPA conditionally approves the exemption from controls for solvent cleaners which emit less than 15 lbs. per day or 3 lbs. per hour of volatile organic compounds in Rule 205(k).

USEPA believes that the State's commitment and schedule to submit any necessary regulations to the IPCB is adequate. USEPA recognizes that the State cannot legally prejudice the outcome of statutorily mandated regulatory proceedings. Nonetheless, in order to guarantee that the deficiencies are adequately addressed and that the plan is adequate to satisfy the requirements of the Act, USEPA imposes the additional condition that any necessary regulations be finally promulgated by the State and submitted to USEPA by November 30, 1981.

In establishing the date by which any necessary regulations must be promulgated, USEPA has taken into consideration the complex IPCB rulemaking procedures which require technical as well as economic hearings and findings on all rulemaking actions. A notice soliciting public comment on the acceptability of this schedule will appear in a separate Notice of Proposed Rulemaking to be published shortly.

2. Rule 205(n) contains an alternative compliance option for owners and operators of surface coating lines. The alternative compliance option exempts sources from the requirements for high solid coating materials if VOC emissions are controlled by an afterburner system providing capture and destruction of the nonmethane volatile organic materials. The State's proposal differs from the 90% capture of emissions or 81% overall control efficiency which represents the presumptive norm for add-on control equipment as technically supported in the CTGs. The State did not submit technical support for its choice of a lower level of control as representing RACT.

State Response: The State of Illinois has made a commitment to complete a study which demonstrates that level of control in its regulation represents RACT for existing sources of VOC, to submit the results of the study to USEPA, and if necessary, to submit

regulations representing RACT to the Illinois Pollution Control Board. The State has made a commitment to fulfill these conditions within nine months of the effective date of this final rulemaking.

Public Comments: A commentator, a national trade association of can manufacturers, questioned the availability of 90% capture systems with respect to can manufacturing sources.

USEPA Response and Final

Determination: While the CTG recommends that 90% capture systems are RACT as a general matter, the CTG does not address unique circumstances which can be taken into account in determining RACT on a case by case basis. Therefore, the State is free to determine RACT on an individual source basis.

Based on the States commitment to conduct a study, to submit the results of the study to USEPA, and, if necessary, to propose regulations representing RACT to the Illinois Pollution Control Board (IPCB) USEPA conditionally approves this provision. The State has committed to fulfill these conditions within nine months of the effective date of USEPA's final rulemaking.

USEPA believes that the State's commitment to submit any necessary regulations to the IPCB is adequate. USEPA recognizes that the State cannot legally prejudice the outcome of statutorily mandated regulatory proceedings. Nonetheless, in order to guarantee that the deficiencies are adequately addressed and that the plan is adequate to satisfy the requirements of the Act, USEPA imposes the additional condition that any necessary regulations be finally promulgated by the State and submitted to USEPA by November 30, 1981.

In establishing the date by which any necessary regulations must be promulgated, USEPA has taken into consideration the complex IPCB rulemaking procedures which require technical as well as economic hearings and findings on all rulemaking actions. A notice soliciting public comment on the acceptability of this schedule will appear in a separate Notice of Proposed Rulemaking to be published shortly.

3. Rule 205(n)(4)(A) permits the use of daily weighted averages for all lines at all categories of coating plants. USEPA indicated in the notice of proposed rulemaking that the provision was generally acceptable but requested the State to provide the following information: (1) A rationale for its allowance of internal offsets in all categories of coating plants; (2) The methodology by which the internal offset provision will be enforced; (3) A

clarification of the methodology in Rule 205(i) for determining control efficiency; and (4) A clarification that the rule does not allow non-RACT sources to provide offsets.

State Response: (1) The State noted that both USEPA and numerous witnesses at State hearings encouraged the State to utilize the "bubble concept". Further, the State believes that failure to extend the internal offset approach to all categories would be arbitrary and capricious when USEPA has specifically approved the use of daily weighted averaging for two categories, automobile and can coating with similar needs and problems. (2) The State commented extensively on the mechanism for enforcing Rule 205(n)(4)(A). According to the State, Rule 205(n)(4)(C) provides that the bubble can be used only if the operator of a source maintains adequate records. If such records are not maintained, then Rule 205(n)(1) applies and the source must meet the emission limitations for all coatings. Failure to meet the emission limitations for all coatings would be a violation of Rule 205(n)(1). (3) In response to USEPA's inquiry about the specific test methodology for determining control efficiency, the State cited the requirement in Rule 205(i). This provision requires that a flame ionization detector or other approved method be used. (4) The State submitted an August 23, 1979 opinion of the Illinois Pollution Control Board clarifying that emission limits for non-RACT sources may not be used to compute compliance with the internal offset provision.

USEPA Response and Final

Determination: USEPA approves the portions of Rule 205 which permit the use of daily weighted averaging at all coating plants because the State has satisfactorily addressed USEPA's concerns.

The following provides further clarification on the methodology by which the internal offset provision (Rule 205(n) alternative compliance) is to be implemented. This "bubble" rule is approvable only if the State follows the provisions set forth in EPA bubble policy, that is, each alternative compliance scheme involving control equipment (bubble) must be submitted to EPA as a SIP revision. Therefore, in those bubble situations where the emissions to be used in a bubble calculation are dependent on the capture and control efficiency of a control system, the emissions must be determined through appropriate testing procedures and the resulting overall control efficiency for each specific piece of add-on control equipment employed

must be established. Establishing this limit as part of the SIP will simplify procedures required to determine compliance. Additionally, critical parameters of the control system must be monitored during testing for establishment of the emission rate and continuous monitoring of these parameters must be employed to allow for the assessment of continued performance at the established rate.

EPA would so like to address the adequacy of the method for determining control efficiency given in rule 205(i). While the flame ionization detector prescribed by rule 205(i) is a suitable technique, the State should be aware that EPA has recently recommended/proposed other techniques which would be superior: In October, 1978 OAQPS published OAQPS No. 1.2-115, *Measurement of Volatile Organic Compounds* which describes an oxidation-reduction method. This method is also part of the proposed NSPS (October 5, 1979) for automobile and light-duty truck surface coating operations.

4. Rule 205(q) allows seasonal exemptions from the use of afterburners and cutback asphalt. In its initial submittal, the State did not provide technical support demonstrating that the standards would be protected with these exemptions.

State Response: The State submitted technical justification for the exemptions using air monitoring data to derive design values for use in the EKMA computer dispersion model. Existing city-specific isopleths from Chicago and St. Louis demonstrate that control requirements will be within reasonable further progress limits for reductions by 1982. Therefore, the State contends it does not need to regulate afterburner and cutback asphalt operations during the months of October through April to show attainment as expeditiously as practicable.

Public Comment: One commentator, a trade association for can manufacturers, submitted a July 26, 1979 memorandum from Robert B. Faoro, USEPA Data Analysis Section, on the subject of ozone air quality standard violations and seasonal afterburner shutdown. The commentator states that this memorandum clearly supports seasonal afterburner shutdown provisions for a period from November 1st through March 31st.

USEPA Response and Final Determination: Based on the State's technical demonstration and on the policy memorandum from Robert B. Faoro, USEPA approves the seasonal exemptions from the use of afterburners

and cutback asphalt contained in Rule 205(q).

5. Rule 205(b)(1) of the 1972 federally approved Illinois State Implementation Plan required vapor collection systems on the loading racks of bulk gasoline terminals with a throughput of more than 40,000 gallons per day. Rule 205(j) of the 1972 federally approved Illinois SIP required compliance with this provision by December 31, 1973. (In the July 2, 1979 Federal Register notice, USEPA erroneously cited April, 1975 as the final compliance date for this provision.) The current Illinois SIP submittal contains a new Rule 205. New Rule 205(j) requires vapor collection systems on the loading racks of bulk gasoline terminals without regard to throughput. The new rule specifies that final compliance for all affected facilities must be achieved by July 1, 1981. USEPA will not approve the extension of final compliance dates when the substantive requirements of a new rule are the same or less stringent than the requirements of an existing federally approved rule. Therefore, USEPA published a list of sources which it believed were required to be in compliance with old Rule 205(b)(1) by December 31, 1973 and would not be allowed additional compliance time.

State Response: Citing "Train v. NRDC" (95 S.Ct. 1470, 421 U.S. 59 (1975)), Illinois contends that USEPA does not have the legal authority to disapprove the compliance schedule in Rule 205(j) which extends the compliance dates included in the original SIP. The State claims that although a December 1973 amendment to Rule 205(b)(1) was never submitted to USEPA, USEPA should have been aware of the change in this rule. Consequently, the State believes that it is unfair and inequitable for USEPA to notify the State now that the amended rule is deficient. Finally, the State suggests that if USEPA disapproves the rule, it will leave those bulk gasoline terminals against which enforcement action is being taken with no final compliance date.

USEPA Response: The federally effective bulk gasoline terminal loading rack rule in Illinois is Rule 205(b) which was approved by USEPA in 1972. The date for final compliance under the provisions of the approved regulation was December 31, 1973. On December 20, 1973, the Illinois Pollution Control Board revised Rule 205(b). The Illinois EPA did not submit the revised rule to USEPA for inclusion in the federally approved Illinois SIP. Pursuant to section 110 of the Clean Air Act, the State must submit plans or revisions to

USEPA. Until the State submits a revision to USEPA, the legally enforceable SIP is the federally approved SIP. Therefore, the prior approved rule is the effective rule. The State of Illinois, in its revision, merely requires what the original rule required, namely vapor recovery and disposal systems. In addition, the new rule extends the date for final compliance to July 1, 1981.

All terminals which qualify for regulation under the terms of federally approved Rule 205(b)(1) are subject to the requirements until a revision of the rule is approved by USEPA. Extension of the date for final compliance to July 1, 1981 is not authorized under the Clean Air Act. The Clean Air Act specifies that sources whose final compliance date is passed, which are not in compliance by July 1, 1979 are subject to provisions of section 120 (non-compliance penalties). To allow sources to extend the date for final compliance to July 1, 1981 would negate the impact of section 120 and the intent of Congress.

Consequently, USEPA does not agree with the State's comment that disapproval of the compliance schedule in Rule 205(j) will leave those bulk gasoline terminals against which enforcement action is being taken with no final compliance date. For federal enforcement, sources previously covered by Rule 205(b), as federally approved in 1972, were to be in compliance by December 31, 1973. Sources which were not previously covered by Rule 205(b) but are newly covered under Rule 205(j) must be in compliance by July 1, 1981.

Public Comments and USEPA Response

1. Two commentators opposed USEPA's proposed disapproval of the compliance schedule in Rule 205(j) as it applies to loading rack controls on bulk gasoline terminals previously controlled in the 1972 federally approved SIP. One commentator summarized the history of Rule 205 and noted that on December 20, 1973 the State modified Rule 205(b)(1) authorizing compliance with the rule by means of submerged loading pipes or other equally effective devices. The commentator contends that although USEPA was aware of these actions, it did not advise the State of its disagreement with the rule until six years later. For this reason and since new Rule 205(o)(2) will require vapor control equipment rather than submerged fill, the commentator opposes USEPA's proposed disapproval.

Pursuant to section 110 of the Clean Air Act, the State must submit plans or revisions to USEPA. Until the State submits a revision to USEPA, the legally

enforceable SIP is the federally approved SIP.

The other commentator notes that a lawsuit pending in the United States District Court for the Northern District of Illinois raises the issue of whether the Illinois proposal "extends the final compliance date of Rule 205" and suggests that USEPA disapproval of this portion of the Illinois SIP is inappropriate during the pendency of the litigation.

Pursuant to section 110 of the Clean Air Act, USEPA is mandated to either approve or disapprove state submitted SIPs and revisions to SIPs within specified timeframes. This mandate is without regard to lawsuits or to other contingencies. Consequently, USEPA cannot withhold rulemaking until the court makes a decision in this case. Using the pendency of litigation as a basis for not acting on revisions to a SIP would potentially promote frivolous litigation to delay SIP action and jeopardize the attainment and maintenance of standards. Once the court has rendered a decision in any such case, appropriate steps can be taken regarding the SIP.

2. Numerous corporations submitted comments identifying errors in the list USEPA published of bulk gasoline terminals. Recognizing that errors were made in the list and the likelihood that any list of specific sources will be inaccurate, USEPA retracts the list published in the July 2, 1979 *Federal Register*. USEPA substitutes the general language below in its final determination to identify sources which will not be permitted additional compliance time.

USEPA Final Determination

On the basis of the above discussion, USEPA disapproves the compliance schedule in Rule 205(j) as it applies to loading rack controls for all emission sources subject to Rule 205(b)(1), as approved by USEPA on May 31, 1972, which were required to be in compliance by December 31, 1973.

General Public Comments:

Several commentators raised both general and regulation specific questions about the ozone portion of the Illinois submittal. One commentator, a national trade association of can manufacturers, enclosed comments filed with the Illinois Pollution Control Board and the Illinois EPA during the State's rulemaking and asked that these comments be considered in USEPA's final rulemaking. In these comments, the trade association asked that because of technological infeasibility an interim emission limitation be provided for end

seam compounds and that the final compliance date for this category be extended. USEPA believes that the commentator raised this issue to the appropriate forum when it submitted its comments to the State of Illinois. The states are free to choose the mix of controls, including emission limitations necessary to attain and maintain the standards. "Train v. NRDC," 421 U.S. 60, 95 S.Ct. 1470 (1975). In doing so, States may consider technological and economic feasibility. Once the State chooses its mix of controls, however, USEPA cannot disapprove that mix for reasons of economic and technological feasibility. "Union Electric v. EPA," 96 S.Ct. 2518 (1976). Therefore, USEPA has no basis for disapproving the emission limitations and compliance schedule in the Illinois SIP for end seal compounds.

The State of New Jersey asked that the Illinois SIP submittal be disapproved because it does not contain appropriate strategies to attain the ozone standard in Illinois or to reduce its contribution to nonattainment elsewhere. The commentator notes that the proposed Illinois SIP does not require statewide RACT for existing sources, and lowest achievable emission rate (LAER) and offsets for new sources. USEPA believes that the Illinois SIP submittal does contain appropriate strategies to demonstrate attainment. In addition, the Illinois SIP requires RACT statewide on existing VOC sources as well as LAER and emission offsets for new sources. Therefore, USEPA cannot disapprove the ozone portion of the Illinois SIP on this basis.

In addition, New Jersey argues as it did in objecting to the Administrator's ozone nonattainment area designations, that entire States should be designated nonattainment, thereby requiring Part D SIP revisions statewide. The Administrator considered all of New Jersey's objections to the designations and responded in the document entitled "Technical Support Document for Agency Policy Concerning Designation of Attainment, Unclassifiable, and Nonattainment Areas for Ozone," January 1979. Availability of this document was announced in the February 1, 1979 *Federal Register* (44 FR 6395). This document and the Administrator's response to New Jersey's comments are incorporated herein by reference.

The Bi-State Metropolitan Planning Commission asked that Illinois reconsider its requirement for RACT statewide because of possible impacts on growth in the Quad Cities Area which encompasses Illinois and Iowa. Iowa does not require RACT statewide.

Section 172 of the Act requires RACT only on existing sources in nonattainment areas. Section 116 of the Act, however, authorizes the state to adopt or enforce more stringent measures than the federal requirements. Therefore, the State's decision to apply RACT statewide is not a basis for USEPA disapproval. Further, USEPA believes that any economic disruption caused by this requirement will be minimal because RACT applies only to existing sources. All new major sources or major source modifications in both Iowa and Illinois will be subject to LAER, BACT or new source performance standards.

Final Determination: USEPA conditionally approves, with one exception, the ozone portion of the Illinois submittal subject to State correction of the deficiencies identified above in Rule 205 and the correction of the deficiencies identified below in the discussion of transportation control plans. These deficiencies must be corrected according to the schedules committed to by the State in the SIP. Public comment on these schedules will be solicited in a notice of proposed rulemaking to be published shortly. USEPA takes no action on a change made in rule 205(k) between USEPA's Notice of Proposed Rulemaking and this final rulemaking action. As discussed above, USEPA believes that approval or disapproval of the changed provision will not alter the outcome of this rulemaking. Public comment on the change in Rule 205(k) will be solicited in a separate Notice of Proposed Rulemaking.

Transportation Control Plans

USEPA proposed rulemaking on seven transportation control plans (TCPs) for Illinois in the July 2, 1979 *Federal Register* (44 FR 38587). Several comments were received which were directed to specific transportation control plans. These comments will be discussed below under the discussion on each area specific plan. One commentator, the Illinois Attorney General's Office, submitted general comments on the transportation control plans submitted by the State as part of the SIP revision. The commentator questioned the expeditiousness of the adoption of Transportation Control Measures (TCMs) for major urban areas in Illinois, the adequacy of the proposed schedules for evaluating TCMs, the failure to consider TCMs which reduce emissions less than ten tons per year, and the lack of identification and involvement of significant public interest groups regarding the development of TCMs. USEPA's response follows seriatim:

Transportation control measures as outlined in section 108 of the Act are considered reasonably available control measures under section 172(b)(2). Pursuant to section 172(a)(2), areas requiring an extension must demonstrate that attainment is not possible in the area by 1982 despite the implementation of all reasonably available measures.

As discussed in the April 4, 1978 General Preamble (44 FR 20372), all necessary measures must ordinarily be adopted in legally enforceable form. For certain classes of measures, however, USEPA interprets the Act to allow approval of State Implementation Plans containing schedules for expeditious development, adoption, submittal, and implementation of the measures. Schedules may be used for transportation control measures. According to the June 1978 USEPA-United States Department of Transportation (USDOT) "Transportation Air Quality Planning Guidelines", the states have until July 1980 to complete an analysis of the measures contained in section 108 of the Act. Upon completion of the analyses, lead local agencies are responsible for making recommendations to local elected officials for implementation of selected measures. Pursuant to section 172(c) of the Clean Air Act, whenever a SIP requires an attainment date extension beyond December 31, 1982 enforceable measures to assure attainment of the standard must be included in the SIP prior to July 1, 1982. Consequently, USEPA believes that the St. Louis Metropolitan Area and Northeast Illinois (Chicago) Area transportation control plans provide for the adoption of TCMs as expeditiously as required by the Act. Although the transportation control plans for Peoria, the Quad Cities, and Springfield contain commitments to review a select number of TCMs, attainment is demonstrated by December 31, 1982 without the measures. Since the areas using TCMs to create a margin for growth are not required by section 172 of the Act to review or adopt any measures, section 172(c) does not mandate a schedule for adoption.

In response to the commentator's statement that the Illinois SIP does not provide an evaluation of applicable TCMs or a detailed schedule for completion of the evaluation, USEPA references the statutory requirements and policy decisions outlined above. According to the USEPA-USDOT "Transportation-Air Quality Planning Guidelines", TCMs must be evaluated by July, 1980. The Illinois SIP submittal

lists the TCMs which will be reviewed by the respective lead local agencies. Additionally, each lead local agency has included in the submittal or has made a commitment to include in the SIP a schedule with interim dates for completing the evaluation. Because TCM implementation is a critical element in the annual demonstrations of meeting the reasonable further progress line, USEPA expects the implementation of TCMs or a commitment to the implementation of TCMs by December 31, 1982.

In response to the commentator's criticism that little has been done to identify or contact significant public interest groups regarding TCM development, USEPA believes that the Illinois SIP submittal demonstrates that these groups and the public have been involved and will continue to be involved in the development, adoption, and implementation of transportation control plans.

Finally, the commentator claims that under the Illinois SIP, TCMs which reduce emissions less than 10 tons per year or less than 0.2 percent of total mobile source emissions are considered unreasonable from an air quality standpoint and are not considered. This is incorrect. In their evaluations of section 108 measures, Chicago planning and transportation agencies will examine the feasibility of implementing TCMs which reduce emissions less than 10 tons per year. These measures include bus, carpool, and bicycle lanes and storage facilities. Regardless, as determined in "Train v. NRDC" (421 U.S. 60, 95 S.Ct. 1470 (1975)), a state may determine the mix of strategies it will employ so long as the end result is attainment.

No other comments were received on three of the transportation control plans and no deficiencies were identified for these plans in the notice of proposed rulemaking. Consequently, USEPA approves, as part of the federally approved SIP, the transportation control plans for the Decatur, Champaign-Urbana, Bloomington-Normal areas, the Rockford area, and the Rock Island-Quad Cities area. As discussed below, USEPA also approves the transportation control plan for the Springfield Metropolitan Area since the State has corrected the one deficiency identified by USEPA. USEPA conditionally approves the transportation control plans for Peoria, Northeastern Illinois and the Illinois portion of the St. Louis Metropolitan Area.

Springfield Metropolitan Area

In its July 2, 1979 Notice of Proposed Rulemaking, USEPA noted that the

Springfield area plan should include procedures for its annual determination of consistency and conformance with the State Implementation Plan. The State has submitted additional information indicating that these determinations will be made using the USEPA/Federal Highway Administration/Urban Mass Transportation Administration Region V Standard Operating Procedures of November 1978. USEPA believes that the State has satisfactorily addressed the cited deficiency.

Therefore, USEPA approves the transportation control plan for the Springfield area.

Peoria Metropolitan Area

Although the State has demonstrated that the Peoria Metropolitan Area will attain the ozone standard by December 31, 1982, the lead local agency has developed a transportation control plan in order to obtain additional emission reduction credits and to accommodate new growth. USEPA identified six areas of the Peoria transportation control plan which in USEPA's judgment did not satisfy the requirements of the Act in the July 2, 1979 Federal Register. The State has made a commitment to resolve the six deficiencies as described below within six months of the effective date of this final rulemaking.

A notice soliciting public comment on the acceptability of this schedule appears elsewhere in today's Federal Register. USEPA approves the transportation plan for the Peoria Metropolitan area on the condition that the State satisfy the requirements outlined below within the specified time frame.

1. USEPA requested a more detailed description of the transportation planning process. The State will provide additional documentation to show how a sample project would proceed from the project selection phase to actual implementation stage including an indication of the timing involved in each step as well as an identification of the involved decision-maker.

2. The Tri-County Regional Planning Commission (Tri-County) was asked to provide a description of procedures which will be used to annually determine the consistency and conformity of the transportation control plan with the SIP. These procedures will be jointly developed by Tri-County, USEPA, and IEPA.

3. USEPA requested details indicating how the emissions impact of implemented transportation projects will be annually assessed and reported. A system for assessing these impacts will be developed.

4. USEPA requested an assessment of the social, economic, health, energy, air quality and welfare impacts of transportation control measures. These impacts will be addressed by Tri-County in its study of each transportation control measure scheduled for detailed evaluation.

5. USEPA requested an identification of all potential CO hotspots in the Peoria Metropolitan Area. Tri-County and IEPA have committed themselves to develop an inventory of all potential CO hotspots. In addition, Tri-County and IEPA have committed to submit a strategy for the elimination of the identified CO hotspots.

6. USEPA requested that the State identify a mechanism for informing elected officials and implementors of progress towards meeting emission reduction goals and projects needed to meet these goals. Tri-County will prepare these and submit systems which will satisfy USEPA's requests.

Northeast Illinois (Chicago) Area

The six county northeast Illinois area is designated as nonattainment for ozone. Portions of this area are also designated as nonattainment for carbon monoxide. The Illinois submittal contains a request for an extension of the statutory deadline to attain the ozone and carbon monoxide standards until December 31, 1987. USEPA believes that the State has demonstrated that attainment is not possible in the northeast Illinois area by December 31, 1982 despite the implementation of all reasonably available measures. Therefore, USEPA approves an extension until December 31, 1987 of the

statutory attainment deadline for ozone and carbon monoxide.

USEPA identified thirteen deficiencies in the Northeastern Illinois transportation control plan in the July 2, 1979 proposed rulemaking. As described below, the State has resolved a number of these deficiencies to USEPA's satisfaction, and has made a commitment to resolve the remaining deficiencies within six months of the effective date of this final rulemaking.

A Notice soliciting public comment on the acceptability of this schedule appears elsewhere in today's Federal Register. USEPA approves the transportation control plan for Northeastern Illinois on the condition that the State satisfies the requirements outlined below. For all requirements except the requirements of implementor commitments and the formal adoption of representative transportation measures, the State must satisfy the conditions within six months of the effective date of this regulation.

1. USEPA requested a schedule identifying when transportation study areas will be defined. The State has made a commitment to complete this process within six months of the effective date of this final rulemaking.

2. USEPA requested additional information on the objectives of the Chicago Area Transportation Study (CATS) Air Quality Advisory Committee. The State will submit to USEPA the resolution creating this committee and identifying the objectives of the Committee.

3. USEPA required an identification of representative air quality measures from

adopted Transportation Improvement Programs (TIPs) and Transportation System Management (TSM) programs.

In a letter dated January 25, 1980, the State submitted a list of twelve transportation measures which are representative of the section 108 reasonably available transportation control measures.

A listing of the twelve representative measures, the project implementors, and the associated emission reductions is contained in the table below. These measures are included as part of the Chicago Metropolitan Area's TIP/TSM Program. While these representative measures have been submitted to USEPA as part of the SIP, the measures have not been formally adopted by the Chicago Area Transportation Study (CATS) Policy Committee as SIP air quality strategies. The State has made a commitment to seek adoption of these strategies at the March, 1980 meeting of the CATS Policy Committee and has further committed to submit evidence of their adoption to USEPA by April 30, 1980. In addition, USEPA required a demonstration that the analysis of transportation control measures outlined in section 108 of the Act is integrated into the ongoing planning and programming cycle. USEPA now believes that this requirement was substantially satisfied in the original submittal. The Chicago Area Transportation Study will, however, review the transportation plan, make changes to document how air quality planning is conducted in the transportation sector, and delineate the timing of significant decision points.

Project name	Project implementor	Location/description	Funding source	1982 HC reductions (tons)	1982 CO reductions (tons)
1. Projects that reduce UMT:					
A. State Street Mall	City of Chicago	Chicago CBD—State from Wacker to Congress	UMTA (43.3%), FHWA (32.2%), Local (24.5%)	31.36	(¹)
B. Bicycle Racks at Commuter Railroad Stations	IDOT	Placed at nine stations providing space for 457 bicycles.	IDOT	1.99	22.45
C. Park-and-Ride Lot at Midway Airport	City of Chicago	Portion of existing Midway Airport facility	City of Chicago	5.01	52.45
2. Projects that improve traffic flow:					
A. Lincoln Square Mall	City of Chicago	Lincoln from Leland to Ainslie and intersection improvements at affected locations.	Economic Development Administration (90%), Local (10%)	(²)	(²)
B. LaSalle Drive	City of Chicago	Widen and improve intersections Stockton-Clark	FAU (75%), Local (25%)	5.0	100.0
C. Stoney Island Avenue	City of Chicago	Flow improvement—widen and improve from 65th to 69th.	FAU (75%), Local (25%)	10.94	(¹)
3. Projects that increase vehicle occupancy:					
A. Oakbrook Ridesharing Program	RTA	Village of Oakbrook—encourage through 16 firms	RTA (100%)	13.66	160.81
B. Proposed RTA Ridesharing Program	RTA	Encourage ridesharing in six-county metro area	USDOT (33 1/3%), UMTA (33 1/3%), Local (33 1/3%)	147.48	2,123
C. Commuter Railroad Station Carpool Matching Program	CATS	Encourage carpooling to and from train station—matching board at 69 stations.	UMTA (44.5%), PL (55.5%)	2.54	28.69
4. Projects that improve mass transit:					
A. O'Hare Rapid Rail Extension	City of Chicago	Extend Kennedy rapid transit line 7.6 miles to O'Hare.	UMTA (80%), IDOT (13.7%), City of Chicago (6.3%)	124.82	(¹)
B. Park Forest South (ICG) Commuter Rail Extension	RTA	2.2 mile extension from Richton Park to Park Forest South and 320 space park and ride lot.	UMTA (76%), IDOT (22.7%), Local (1.3%)	12.77	121.05
C. RTA Feeder Bus Expansion	RTA	Feeder bus to rail stations—improvements made to 40 routes in fiscal year 1979.	Farebox (27%), Local (73%), State (73%), Federal (73%)	12.1	344.4

¹ The change in CO concentrations is reported for these projects rather than the emission reductions. Thus, the emission reductions could not be included in this table.

² There was a slight emissions increase in the immediate project vicinity because of increased traffic volumes. This traffic previously used nearby routes and, thus, the project probably resulted in a net emissions decrease. This decrease cannot be estimated.

4. USEPA required documentation that an ongoing process exists for disseminating information to locally elected officials. USEPA believes that this requirement is satisfied by Section D of the transportation control plan. Additionally, the Chicago Area Transportation Study will submit information documenting current activities conducted pursuant to this section of the plan.

5. USEPA required a schedule identifying when public education, information, and elected official consultation will take place. USEPA believes that this requirement is satisfied by Section E of the transportation control plan.

6. USEPA requested that the State identify both the cost of strategies and available funding sources. The State will identify the cost and potential funding sources for the representative air quality measures discussed in item 3 above. Further, the State will list all available funding sources.

7. USEPA requested an explanation of the approach used in evaluating emission reductions from transportation projects. In addition, USEPA required the submittal of a reasonable further progress line for mobile sources in the Northeastern Illinois area and resolution of an inconsistency between the transportation control plan and the general discussion in the submittal. In order to demonstrate the approach used in calculating emission reductions from transportation projects, the State will provide sample calculations. USEPA has determined that an adequate reasonable further progress line for mobile sources in Northeastern Illinois is contained in the SIP submittal so that the State need not submit additional material. An inconsistency in a table on page 47 of the transportation control plan will be corrected to be consistent with Chapter 10 of the SIP.

8. USEPA requested implementor commitments in the July 2, 1979 notice of proposed rulemaking. The January 25, 1980 state letter submitted as a SIP revision partially satisfies this requirement. USEPA has determined that these commitments for additional measures cannot be obtained until completion of the alternatives analysis in July, 1980. The analysis of measures described in section 108 of the Clean Air Act will develop information essential to local decisionmaking on the costs and effects of various actions. Upon completion of the alternatives analysis, local elected officials will be required to make decisions regarding the expeditious implementation of all reasonably available measures.

9. USEPA requested that the State guarantee that public transit receive priority in the transportation planning process pursuant to sections 172(b)(2), 110(a)(3)(d), and 110(c)(5)(d) of the Act. USEPA agrees with the State that this requirement has been met and no additional action need be taken on it.

10. USEPA requested documentation of specific mobile source emission decreases. The State will provide this documentation within six months of the effective date of this final rulemaking.

11. USEPA requested that the State identify procedures for annually determining the consistency and conformity of the transportation control plan with the SIP. The Chicago Area Transportation Study (CATS) has made a commitment to review the plan, make a determination, and submit a resolution from the CATS Policy committee reflecting its determination. The Illinois EPA has made a commitment to review the determination and resolution.

12. USEPA requested accelerated implementation of transportation control measures which will be adopted shortly. USEPA believes that the State's commitment under item 3 above also fulfills this requirement.

13. USEPA requested additional information on reasonable further progress in eliminating carbon monoxide hotspot intersections and links. The State will submit an inventory identifying the location of carbon monoxide hotspots and a schedule for hotspot elimination.

St. Louis Metropolitan Area (Illinois Portion)

The Illinois portion of the St. Louis Metropolitan area has been designated as nonattainment for ozone. The Illinois submittal contains a request for an extension of the statutory deadline to attain the ozone standards until December 31, 1987. USEPA believes that the State has demonstrated that attainment is not possible in the St. Louis Metropolitan Area despite the implementation of all reasonably available control measures. Therefore, USEPA approves an extension until December 31, 1987 of the statutory attainment deadline for ozone.

USEPA identified five areas in the transportation control plan for the Illinois portion of the St. Louis Metropolitan Area which in its judgment did not satisfy the requirements of the Act. As discussed below, the lead local agency, East-West Gateway Coordinating Council (EWGCC), has corrected three of these deficiencies and made a commitment to resolve the remaining deficiencies on specified schedules. A notice soliciting public

comment on the acceptability of the schedules appears elsewhere in today's **Federal Register**. USEPA approves the transportation plan for the Illinois portion of the St. Louis Metropolitan Area on the condition that the State satisfy the requirements outlined below.

1. USEPA requested a more detailed description of the transportation planning process including the criteria used by the lead local agency to assess impacts of strategies. This request was complied with on page 35 of the section 175 grant application.

2. USEPA requested that implementor commitments be obtained and submitted. The January 25, 1980 letter from the State included a representative list of transportation measures for the Illinois portion of the St. Louis interstate area. This letter, submitted as a SIP revision, partially satisfies this requirement. The lead local agency acknowledged in an August 27, 1979 letter to USEPA that implementor commitments for additional measures will be obtained upon completion of the analysis of alternative strategies in July 1980.

Additionally, the lead local agency has made a commitment to provide implementor commitments on transportation control measures having emission reductions of 6.45% within twelve months of the effective date of this rulemaking.

3. USEPA requested the State to submit a schedule for conducting the analysis of the strategies in section 108 of the Act. This request was satisfactorily addressed on pages 39 and 47 of the section 175 grant.

4. USEPA requested that the State identify procedures for annually determining the consistency and conformity of the transportation control plan with the SIP. East-West Gateway Coordinating Council satisfactorily addressed this requirement on page 39 of the St. Louis Metropolitan Area Ozone Volume of the Illinois SIP.

5. USEPA requested additional information concerning a credit taken in the transportation control plan for a fifty percent increase in mass transit ridership. East-West Gateway Coordinating Council stated in their August 27, 1979 letter to USEPA that they will examine the feasibility of generating a fifty percent increase in the next year under a section 175 grant. EWGCC stated that because they have not yet had the opportunity to evaluate the means for achieving the increase, they cannot commit any resources to achieving the goal. USEPA believes this is a reasonable approach. EWGCC has made a commitment to secure necessary implementor commitments after the July

1980 completion of the analysis of alternative measures in section 108 of the Act for those projects which will effect the fifty percent ridership increase. Approval of the transportation control plan is conditioned upon the submittal of these commitments to USEPA within one year of the date of publication of this final rulemaking.

USEPA notes the possibility, however, that the alternatives analysis may demonstrate that the fifty percent increase in ridership cannot be achieved. This would prevent the associated emission reductions necessary to meet the ozone standard from being achieved. If this occurs, the alternatives analysis must produce substitute measures to achieve the necessary emission reductions.

USEPA acknowledges one additional issue pertaining to the requirement outlined in the USEPA Region VII Notice of Proposed Rulemaking which appeared in the *Federal Register* on October 25, 1979 for the St. Louis Metropolitan Area. In this Notice, USEPA requested a list of representative programmed transportation projects. In a letter dated January, 25, 1980, the State of Illinois satisfied this requirement by submitting a list of currently adopted and programmed transportation control measures for the Illinois portion of the St. Louis Metropolitan Area. The overall demonstration of attainment for the St. Louis Metropolitan Area will be addressed in a Notice of Final Rulemaking to be published shortly by USEPA's Region VII Office.

Vehicle Inspection and Maintenance

"Inspection/Maintenance" (I/M) refers to a program whereby motor vehicles receive periodic inspections to assess the functioning of their exhaust emission control systems. Vehicles which have excessive emissions must then undergo mandatory maintenance. Generally, I/M programs include passenger cars, although other classes of vehicles can be included as well. Enforcement can be accomplished by requiring proof of compliance in order to purchase license plates or to register a vehicle.

Section 172 of the Clean Air Act requires that State Implementation Plans (SIPs) for nonattainment areas must meet certain criteria. For areas which demonstrate that they will not be able to attain the ambient air quality standards for ozone or carbon monoxide by the end of 1982, despite the implementation of all reasonably available measures, an extension up to 1987 may be granted. In such cases, section 172(b)(11)(B) requires that "the plan provisions shall establish a specific schedule for

implementation of a vehicle emission control inspection and maintenance program * * *

USEPA issued guidance on February 24, 1978, on the general criteria for SIP approval, including I/M, and on July 17, 1978, regarding the specific criteria for I/M SIP approval. Both of these items are part of the SIP guidance material referred to in the General Preamble for Proposed Rulemaking, 44 FR 23072, 20373, n.6.

Though the July 17, 1978, guidance should be consulted for details, the key elements for I/M SIP approval are as follows:

Legal Authority—States or local governments must have adopted the necessary statutes, regulations, ordinances, or other legally enforceable documents to implement and enforce the inspection/maintenance program. (Section 172(b)(10)).

Commitment—The appropriate governmental unit(s) must be committed to implement and enforce the I/M program. (Section 172(b)(10)).

Resources—The necessary finances and resources to carry out the I/M program must be identified and committed. (Section 172(b)(7)).

Schedule—A specific schedule to establish the I/M program must be included in the State Implementation Plan. (Section 172(b)(11)(b)). Interim milestones are specified in the July 17, 1978, memorandum in accordance with the general requirement of 40 CFR 51.15(c).

Program Effectiveness—As set forth in the July 17, 1978, guidance memorandum, the I/M program must achieve at least a 25 percent reduction in passenger car exhaust emissions of hydrocarbons and a 25 percent reduction for carbon monoxide. This reduction is measured by comparing the levels of emissions projected to December 31, 1987, with and without the I/M program. This policy is based on section 172(b)(2) which states that "the plan provisions * * * shall * * * provide for the implementation of all reasonably available control measures * * *". Specific detailed requirements of these five provisions are discussed below.

To be acceptable, I/M legal authority must be adequate to implement and effectively enforce the program and must not be conditioned upon further legislative approval or any other substantial contingency. However, the legislation can delegate certain decision making to an appropriate regulatory body. For example, a State department of environmental protection or department of transportation may be charged with implementing the program,

selecting the type of test procedure as well as the type of program to be used, and adopting all necessary rules and regulations. I/M legal authority must be included with plan revisions which include I/M (i.e., a plan which establishes an attainment date beyond December 31, 1982) unless an approved extension to certify legal authority is granted by USEPA. The granting of such an extension, however, is an exceptional remedy to be utilized only when a State legislature has had no opportunity to consider enabling legislation.

Written evidence is also required to establish that the appropriate governmental bodies are "committed to implement and enforce the appropriate elements of the plan." (Section 172(b)(10).) Under section 172(b)(7), supporting commitments for the necessary financial and manpower sources are also required.

A specific schedule to establish an inspection/maintenance program is required. (Section 172(b)(11)(B)). The July 17, 1978, guidance memorandum established as USEPA policy the key milestones for the implementation of the various I/M programs. These milestones were the general SIP requirement for compliance codified at 40 CFR 51.15(c). This section required that increments of progress be incorporated for compliance schedules of over one year in length.

To be acceptable, an I/M program must achieve the requisite 25 percent reductions in both hydrocarbons and carbon monoxide exhaust emissions from passenger cars by the end of Calendar Year 1987. The Act mandated "implementation of all reasonably available control as expeditiously as practicable." Section 172(b)(2). At the time of passage of the Clean Air Act Amendments of 1977, several inspection/maintenance programs were already operating, including mandatory programs of New Jersey and Arizona, operating at about 20 percent stringency. (The stringency of a program is defined as the initial proportion of vehicles which would have failed the program's standards if the affected fleet has not undergone I/M before. Because some motorists tune their vehicles before I/M tests, the actual proportion of vehicles failing is usually a smaller number than the stringency of the program.) Depending on program type (private garage or centralized inspection), a mandatory I/M program may be implemented as late as December 31, 1982, and the attainment date may be as late as December 31, 1987. Based on an implementation date of December 31, 1982, and a 20 percent stringency factor, USEPA predicts the reductions of both

CO and HC exhaust emissions of 25 percent can be achieved by December 31, 1987. Earlier implementation of I/M will produce greater emission reductions. Thus, because of the Act's requirement for the implementation of all reasonably available control measures and because New Jersey and Arizona have effectively demonstrated practical operation of I/M programs with 20 percent stringency factors, it is USEPA policy to use a 25 percent emission reduction as the criterion to determine compliance of the I/M portion with section 172(b)(2).

In its State Implementation Plan, Illinois included provisions for an I/M program. Eight Illinois counties will be included in the I/M program: Cook, DuPage, Kane, Lake, McHenry, Will, Madison, and St. Clair Counties. These counties constitute the Illinois portions of the Chicago and St. Louis metropolitan areas. The SIP makes a demonstration that Cook, DuPage, Kane, Lake, McHenry, and Will counties cannot attain the primary national ambient air quality standards for O₃ and CO by 1982, and that Madison and St. Clair counties cannot attain the O₃ standard by 1982. Vehicle categories covered by the program will include gasoline powered light duty passenger cars, light duty trucks, and heavy duty vehicles and provides for annual inspection. Light duty passenger cars and light duty trucks older than 13 years old will be exempted from testing.

Inspections would be carried out by a private contractor working for the State. An idle mode inspection test will be used. Vehicles failing inspection must be repaired and reinspected. Enforcement of the program will be carried out through the State's vehicle registration system. Mandatory inspection and repair of vehicles is scheduled to start no later than December 31, 1982. The SIP identifies the financial resources required to implement and operate the I/M program. Total program costs for five years of operation (1983-1987) are estimated to be \$31,600,000. The program will be largely self-supporting through the imposition of an annual inspection fee which is expected to be approximately \$6.50 for light duty cars and trucks and \$12.67 for heavy duty trucks. Any program expenditures not covered by the inspection fee will be supported by legislative appropriation. Through its I/M Implementation Schedule, Illinois makes a commitment to seek the appropriation of necessary funds to establish the program during the time period between January 1, 1980, to June 30, 1980.

Based on information in the SIP, in 1987 the I/M program will achieve a 32.2 percent reduction in HC exhaust emissions and a 43.2 percent reduction in CO exhaust emission for the Chicago metropolitan area, and a 20.3 percent reduction in HC exhaust emission and a 48.7 percent reduction in CO exhaust emissions for the St. Louis metropolitan area. These emission reductions were calculated by comparing total mobile source exhaust emissions in 1987 with and without the I/M program. The calculations are based on the assumptions that the I/M program will have a 30 percent stringency factor and that a mechanics training program will be implemented.

The Illinois submittal contains a certification that the State has sufficient legal authority to implement and enforce an I/M program. The basis for the State's certification of legal authority is the Illinois Environmental Protection Act (Ill. Rev. Stat., 1977, ch. 111 1/2, §§ 1005-1051, as amended), which gives the Pollution Control Board the authority to adopt regulations requiring the inspection of any vehicle which may cause or contribute to air pollution (Title 2, § 10(f)); and which prohibits any State, department or agency from licensing any vehicle not in compliance with Board regulations (Title 12, § 48(a)). The I/M implementation schedule contains a commitment by the Illinois Environmental Protection Agency to develop an I/M regulatory proposal and submit it to the Pollution Control Board this year. The Environmental Protection Act (Title 8, § 78) requires the Board to schedule a public hearing on any regulatory proposal submitted by the Illinois Environmental Protection Agency, and to adopt rules and regulations shown to be needed to carry out the intent of the Act (Title 2, § 10).

In the Notice of Proposed Rulemaking on the Illinois SIP (44 FR 128, July 2, 1979), USEPA proposed to approve the I/M portion of the SIP with the minor condition that the State commit to the implementation of a mechanics training program. Illinois EPA's response to the Notice of Proposed Rulemaking recognized the need for mechanics training and made a commitment to the development of such a program.

This response satisfies USEPA's condition on the necessary commitment to mechanics training. No other comments were received by USEPA with regard to the proposed approval of the I/M portion of the SIP. Therefore, USEPA is approving the I/M portion of the State of Illinois' SIP. As discussed above, the Illinois submission meets all of USEPA's criteria for I/M SIP

approval: The State has legal authority to implement and enforce an I/M program, the program's projected emission reductions comply with the USEPA requirement for a 25 percent reduction in CO and HC exhaust emissions, the State is committed to obtain the necessary resources to establish the program, and the State's I/M implementation schedule contains the necessary milestones which will permit full implementation of the program by December 31, 1982.

Carbon Monoxide

Two areas of Illinois are designated as nonattainment for carbon monoxide. These areas include portions of Peoria County and Cook County. The Illinois SIP relies primarily on controlling emissions for mobile sources to attain the carbon monoxide NAAQS. As discussed above in the section of this notice on Transportation Control Plans, USEPA is conditionally approving the transportation control plans for the Peoria Metropolitan Area and Northeastern Illinois. Therefore, USEPA approves the portion of the Illinois SIP addressing attainment and maintenance of the carbon monoxide standards on the condition that the State satisfy the conditions specified above under the discussion of the Peoria and Northeast Illinois transportation control plans. These conditions must be satisfied within six months of the effective date of this rulemaking.

Nitrogen Dioxide

A portion of the Chicago Central Business District is designated as not attaining the nitrogen dioxide National Ambient Air Quality Standard. In the July 2, 1979 notice of proposed rulemaking, USEPA noted that evidence existed indicating that the nitrogen dioxide problem in Illinois was more extensive than originally indicated. Consequently, USEPA proposed approval of the portion of the SIP addressing nitrogen dioxide on the condition that the State commit itself to make additional analyses of the problem and, if necessary to adopt and implement any additional measures necessary to assure attainment. In its comments on the notice of proposed rulemaking, the State of Illinois made a commitment to perform the necessary analyses to determine if there is a need to change the SIP for nitrogen dioxide in the designated nonattainment area. The State has made a commitment to complete the analysis and develop any necessary regulatory proposals by July 1, 1980. In addition, the State has made a commitment to seek adoption of any necessary regulations so that

attainment of the standard will be demonstrated by December 31, 1982. USEPA approves the nitrogen dioxide portion of the Illinois SIP on the condition that the State fulfills the conditions outlined above within the specified timeframes.

USEPA believes that the commitment to submit any necessary regulations to the IPCB is an adequate commitment by the State. USEPA recognizes that the State cannot legally prejudice the outcome of statutorily mandated regulatory proceedings. Nonetheless, in order to guarantee that the deficiencies are adequately addressed and that the plan is adequate to satisfy the requirements of the Act, USEPA imposes the additional condition that any necessary regulations can be finally promulgated by the State and submitted to USEPA by July 1, 1981.

In establishing the date by which any necessary regulations must be promulgated, USEPA has taken into consideration the complex IPCB rulemaking procedures which require technical as well as economic hearings and findings on all rulemaking actions. A notice of soliciting public comment on the acceptability of this schedule will appear in a separate Notice of Proposed Rulemaking to be published shortly.

New Source Review

Background

In March of 1979 the Illinois Environmental Protection Agency (IEPA) drafted new source review rules which provided for the issuance of construction permits to new or modified sources in nonattainment areas. The draft of the rules was submitted to USEPA on April 3, 1979 as part of Illinois draft State Implementation Plan (SIP) for nonattainment areas. The rules were subsequently filed April 24, 1979 by IEPA with the Illinois Secretary of State pursuant to Sections 5 (b) and (e) of the Illinois Administrative Procedure Act (IAPA), (Illinois Rev. Stat. Chapter 127, Section 1005) so as to become immediately effective. Section 5 (b) of the IAPA provides that:

If any agency finds that an emergency, reasonably constituting a threat to the public interest, safety, or welfare, requires adoption of a rule upon fewer than 45 days notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period of not longer than 150 days but the Agency's authority to adopt an identical rule under subsections (a)(1) and (a)(2) of this section is not precluded.

Section 5(e) provides that:

If any agency is required by Federal law or Federal rules and regulations or by an order of court to adopt a rule under conditions which preclude the agency's compliance with the notice or hearing requirement of this Act, the agency may proceed to adopt such a rule upon filing with the Secretary of State. (Amended by PA 80-1035)

In its July 2, 1979 Notice of Proposed Rulemaking (44 FR 38587), USEPA solicited comment on the proposed rules and noted several deficiencies therein. These rules were subsequently subjected to public comment requirements of Section 5(a). As a result of public comment received, the IEPA submitted a revised set of rules to the Secretary of State on September 4, 1979. These rules were also effective immediately under Section 5 of the IAPA. The September 4, 1979 regulations included provisions which had not been previously submitted to USEPA for review. They also contained different numerical designations.¹ IEPA had 150 days from September 4, 1979 to finalize these rules by holding hearings and providing for a 45 day comment period or longer, if needed. The revised set of rules was published in the Illinois Register on September 14, 1979. Hearings were held before the legislative Joint Committee on Administrative Rules in October 1979. IEPA finalized these rules January 16, 1980.

On January 25, 1980 IEPA submitted the final new source review rules to USEPA. In doing so, the IEPA specifically reserved two provisions which differed significantly from the rules which USEPA proposed to approve on July 2 (44 FR 38587). The provisions are contained in Sections 5.1(a)(2)(ii) and 5.1(a)(2)(iii). These two new provisions will be formally submitted to USEPA shortly as a separate SIP revision action and will be the subject of a separate Notice of Proposed Rulemaking. In the interim, no permits will be issued under the reserved provisions.

The final rules also included other new material. Because this new material was not previously available for public review and comment, USEPA is also withholding rulemaking on this new material which is as follows: (1) The definition of reconstruction in Section 4.7; (2) the expansion of Section 4.11 (Section 3.10 April submittal) to include as allowable emissions "a reasonable estimate of emissions in excess of applicable standards during startup, malfunction or breakdown"; and (3) the Illinois' external offset procedures

¹ Discussion of the individual rules include both the April numerical designation and the present designation of September 4, 1979.

contained in Section 10. These provisions will be announced for public review and comment in a separate Notice of Proposed Rulemaking. In the Interim, no externally provided offsets will be available to sources seeking a construction permit under Illinois' New Source Review Regulations, nor will any permits be issued by IEPA under Sections 5.1(a)(ii) and 5.1(a)(2)(ii).

Comments

In response to the July 2, 1979 Notice of Proposed Rulemaking (44 FR 38587), USEPA received comments regarding the proposed new source review rules from three different commentators.

Comment: One commentator challenged the validity of IEPA's use of the emergency procedure contained in the IAPA for the adoption of rules. The commentator claimed that not only did IEPA fail to establish any "emergency" which triggered use of the rule but, in addition, the IEPA lacked statutory authority under the Illinois Environmental Protection Act to promulgate any substantive new source rules. This commentator, (representing an industry), and another commentator, (representing an environmental group), asserted that IEPA exceeded its authority in adopting Rules for Issuance of Permits to New or Modified Sources Affecting Nonattainment Areas because the rules impose substantive requirements upon new sources intending to build and upon existing sources intending to make modifications to their existing plants. They commented that these rules are substantive because they contain the following provisions: The adoption of environmental standards for the issuance of construction permits, and the requirement that new or modified sources reduce emissions to the lowest achievable emission rate.

These commentators claim that under the Illinois Environmental Protection Act, rules which contain substantive provisions such as requirements for emission offsets and LAER must be promulgated by the Illinois Pollution Control Board (IPCB); and that the IEPA had no authority to issue the rules.

The rules promulgated by IEPA cite Sections 4 and 39 of the Illinois Environmental Protection Act and Rule 103 of the Illinois Pollution Control Board Rules and Regulations as its authority for promulgating the Rules. Section 4(g) of the Act provides that:

The Agency shall have the duty to administer, in accord with Title X of this Act, such permit and certification systems as may be established by this Act or by regulations adopted thereunder.

Title X, Section 39(a) of the Illinois Environmental Protection Act requires the Agency to issue a permit to an applicant upon proof by the applicant that it will not cause a violation of the Act or of regulations promulgated under the Act. Section 39(a) provides further that the Agency in granting permits:

May impose such conditions as may be necessary to accomplish the purposes of [the] Act, and as are not inconsistent with the regulations promulgated by the Board * * *

Rule 103 of the Illinois Pollution Control Board Rules and Regulations, promulgated by the Board, is an existing regulation which provides for the issuance of construction and operating permits. Under IPCB Rule 103(a)(2) the Agency is given the authority to "adopt procedures which require data and information * * * which are reasonably designed to determine compliance with the Act, [the] Chapter, and ambient air quality standards * * *" and is given additional authority to impose "such conditions in a Construction Permit as may be necessary to accomplish the purpose of the Act, and as are not inconsistent with the Regulations promulgated by the Board * * *".

Illinois also received similar comments at its public hearings held in May 1979, i.e., that the nonattainment area policy exceeded the statutory authority of IEPA. The commentors claimed that the Rules promulgated by IEPA require IEPA to determine the Lowest Achievable Emission Rate [LAER] for sources subject to the policy and that the authority to determine such emission limitations was given only to the IPCB. Illinois responded to these comments by citing Sections 4 and 39 of the Illinois Environmental Protection Act discussed above and by asserting that the stated purpose of the Act was the attainment and maintenance of air quality standards and "without the nonattainment area policy the Agency could not issue permits to sources upon which the attainment area policy places requirements." IEPA noted that LAER was not being enforced as an "emission standard" but as a "general policy for the improvement of air quality in nonattainment areas."

Response: USEPA is concerned about the commentors' assertion of IEPA's lack of statutory authority to promulgate the New Source Review Rules. While the Rules have been filed with the Secretary of State and have been reviewed by the Joint Committee on Administrative Rules which reviews, among other things the legal authority under which the rules were promulgated, USEPA is approving the rules on the condition that Illinois submit within one hundred and eighty

days (180) a determination signed by the Illinois Attorney General that the promulgation of the New Source Review Rules is consistent with Illinois law; or, in the alternative, submit to USEPA for approval another nonattainment area new source review plan which is consistent with Illinois law and meets the requirement of the Clean Air Act.

Comment: LAER and offset determination for individual sources should be submitted to USEPA as SIP revisions so that they will be enforceable by citizen groups as well as USEPA.

Response: Illinois is presently adopting procedures providing for public comment on its issuance of permits and Section 304 of the Clean Air Act (42 U.S.C. 7604) provides for enforcement of construction permits by citizens.

Comment: One commentor questioned the authority of the Agency to treat an offset as an amendment to an operating permit on the basis that neither the Illinois Environmental Protection Act nor the IPCB's regulations require that an offset determination be considered in the process. This comment is directed to procedures for determination of external emission offsets and will be considered in a separate Notice of Proposed Rulemaking to be published at a later date.

Comment: One commentor stated that in order to provide for reasonable further progress, the growth allowance should be quantified and then recalculated each time a source draws upon it.

Response: States are free under the Clean Air Act to select their own emission offset procedure so long as the procedure meets the requirements of the Act and will provide reasonable further progress toward attainment. Illinois has in Section 12 of its New Source Review Regulations (Section 11, April submittal) provided that the demonstration of improvement in air quality shall not include "paper offsets" but shall include only actual emission reductions. Additionally § 173(b)(3) of the Clean Air Act requires periodic demonstrations of reasonable further progress in the interim between plan approval and attainment of NAAQS. Therefore, USEPA believes that the State new source review procedures meet these requirements of the Act.

Comment: Other comments received concerned the exemption provided for in Sections 4.1(a)(3) and 5.1(c) of the April submittal and specified in Section 10 of the April submittal (Section 11, November submittal). These provisions exempted certain sources from the requirement of the certification of compliance required by Section 173(3) of

the Clean Air Act. The requirement was waived for sources actively seeking to overturn a violated regulation based upon technical infeasibility or economic unreasonableness. One commentor claimed that it was contrary to Section 173 of the Act and the other commentor believed it to be a reasonable exception.

Response: USEPA cited this exemption as a deficiency in its July 2 Notice of Proposed Rulemaking since such exemption is not permissible under Section 173 of the Act. Illinois has corrected this deficiency by deleting this exemption from Section 11 of the November submittal, (Section 10, April submittal).

Comment: One commentor challenged USEPA's action in the July 2 Notice of Proposed Rulemaking wherein USEPA cited the deficiencies in Illinois' New Source Review Rules. The challenge was based on the fact that the rules were not final rules, and on the allegation that the deficiencies were not a failure of meeting the requirements of Section 173.

Response: Responses to the question of the legality of USEPA proposing rulemaking on rules still to be finalized on the USEPA's authority to determine deficiencies in state plans which must be corrected before final plan approval are contained in the general preamble of this Notice.

Response of IEPA to Deficiencies Noted by USEPA in its July 2, 1979 Notice of Proposed Rulemaking

1. One deficiency of Illinois' New Source Review Rules pertained to the fact that Illinois does not have regulations which require a public comment period on permit applications (See 40 CFR 51.18). In its response to this deficiency, IEPA has made a commitment to adopt such regulations. In a letter dated December 11, 1979 IEPA has provided USEPA a copy of the proposed regulations filed with the Secretary of State. Hearings have been held on the rules and they are expected to be finally adopted early in 1980.

USEPA Response: Submission of these rules to USEPA for inclusion in the SIP will remove this longstanding SIP deficiency. Since the public notice provisions of 40 CFR 51.18 are not specifically required under Part D of the Act, and since the State is moving to correct the deficiency in an expeditious manner, this deficiency will not result in disapproval of the New Source Review portion of the State's nonattainment SIP.

2. Other deficiencies noted by USEPA in its April 2, 1979 Notice of Proposed Rulemaking pertained to the procedures for determining emission offsets in Section 9 of the April submittal of the Rules (Section 10, November submittal).

Sections in the Rule could have been interpreted to allow "paper offsets" and also contained references to a prohibition which would prevent overcomplying sources from increasing actual emissions. This prohibition was not contained in any Illinois regulation. Illinois corrected these deficiencies by changing the language in the new source review procedures to remove references to the nonexistent prohibition on increasing emissions, and to indicate that "paper offsets" (defined in the Illinois regulation as "offsets from the allowable emissions where no actual reductions in emissions occur") are not permissible in any air quality improvement demonstration.

USEPA Response: In USEPA's opinion, these changes resolve the noted deficiency.

3. Another deficiency cited by USEPA was that Section 8 of the April submittal (Section 9, November submittal) specified that in making lowest achievable emission rate (LAER) determinations, the Illinois EPA will depend on information reasonably available to the applicant. USEPA found that this determination of LAER was not consistent with the Clean Air Act, and that disputes over what was or was not reasonably available "to the applicant" would result in unnecessary litigation. USEPA requested the State to correct the deficiency by defining LAER in a manner consistent with the statutory definition in the Clean Air Act.

Illinois corrected this deficiency by eliminating the words "to the applicant".

USEPA Response: USEPA accepts this change as a correction of the deficiency.

4. USEPA cited the exemption of certain sources from certifying compliance as being too broad and not in concert with Section 173(3) of the Act. Illinois corrected this deficiency by narrowing the exemption to only those permitted under the Act.

USEPA Response: USEPA accepts this change as a correction to the noted deficiency.

5. The last deficiency cited by USEPA concerned the lack of criteria in the Rules for making air quality analyses. Illinois has corrected this deficiency by adding a section (Section 4.13) entitled "Acceptable Dispersion Modeling." The appropriate criteria for performing the required air quality analyses are specified in this provision.

USEPA Response: This action by Illinois corrects the deficiency.

Final Determination

USEPA conditionally approves Illinois New Source Review Rules on file with the Illinois Secretary of State with the exception that no action is being taken

at this time on those portions of Section 5 which were reserved by IEPA; on the definitions in Section 4.7 and the new material in Section 4.11; and in Sections 10.1 and 10.2 of the November submittal which contains the procedure allowing external offsets. The approval is subject to the condition that Illinois submit within one hundred eighty days a determination signed by the Illinois Attorney General that the promulgation of the New Source Review Rules is consistent with Illinois law; or, in the alternative, submits to USEPA for approval another nonattainment area new source review plan which is consistent with Illinois law and meets the requirements of Sections 172(b)(6) and 173 of the Clean Air Act.

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

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

Section 110(a)(2) of the Act made clear that each source has to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe Part D to authorize relaxation or delay of emission limits for particular sources. The added time

for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D. (123 Cong. Rec. H 11958, daily ed. November 1, 1977).

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

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

Under Executive Order 12044, USEPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of final rulemaking is issued under the authority of Sections 110(a) and 172 of the Clean Air Act, as amended (42 U.S.C. 7410(a), 7502).

Dated: February 13, 1980.

Barbara Blum,
Acting Administrator.

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

1. Section 52.720(c) is amended by adding new subparagraphs (16)–(21) to read as follows:

§ 52.720 Identification of plan.

(c) * * *

(16) On April 4, 1979, the State submitted its draft nonattainment area plan for all areas designated nonattainment as of March 3, 1978 and as revised on October 5, 1978. This submittal contained a request for extensions of the statutory attainment deadline for CO and O₃. The submittal also included a vehicle emission inspection and maintenance program and a new source review plan. Although the State submittal also included the following provisions, USEPA is taking no action to include them in the federally approved SIP at this time: Rule 203(d)(5) which controls particulate emissions from iron and steel sources, the portions of Rules 101, 103, and 105 relating to the provisions addressing malfunctions in general requirements of the Clean Air Act which are not Part D requirements, and the provisions covering open burning, mobile source emission standards, diesel locomotive emission standards, adoption of ambient air quality standards, organic emissions from organic water separation, carbon monoxide emissions from petroleum and petroleum chemical catalyst incinerators, sulfuric acid mist emissions, sulfur dioxide emissions for fuel combustion sources in other than major metropolitan areas, emissions from hydrogen sulfide flares at chemical manufacturing plants, compliance dates for organic emission limitations, carbon monoxide from polybasic organic acid partial oxidation processes, nitrogen dioxide emissions from new facilities burning coal refuse, emission limitations for air furnaces, particulate emissions from low carbon waste incinerators, and adoption of Federal New Source Performance Standards. In addition, USEPA is not rulemaking at this time on those portions of the following rules which contain specified changes made between the publication of the Notice of Proposed Rulemaking and the final rulemaking action: (i) The exemption in Rule 203(f)(3)(A) lifting control requirements from storage piles if the owner of the pile proves that fugitive emissions from the pile do not cross the

property line; (ii) The deletion of the 10% opacity in Rule 203(f)(3)(C) for conveying operations; (iii) The provision of Rule 205(K)(1)(A) or (b) from all provisions of Rules 205(K) (2) and (3); (iv) The new materials in Section 4.11 of the Rules for Issuance of Permits to New or Modified Air Pollution Sources; (v) The addition of a definition of "reconstruction" in Section 4.7 of the Rules for Issuance of Permits; (vi) The procedure allowing external offsets contained in Section 10 of the Rules for Issuance of Permits.

(17) On August 29, 1979, the State submitted additional information and clarification for the nonattainment area plan in response to USEPA's July 2, 1979 notice of proposed rulemaking.

(18) On September 20, 1979, the State submitted a summary of public hearing comments on the plan.

(19) On October 30, 1979, the State submitted copies of Illinois Pollution Control board final orders for control of VOC emissions from stationary sources (Rule 205) and sources of fugitive particulates (Rule 203(f)).

(20) On December 20, 1979, the State submitted a letter containing the dates that most of the regulatory and nonregulatory portions of the nonattainment area plans were finally adopted by the Illinois Pollution Control Board. Rule 205 containing RACT controls for stationary sources of VOC was effective in the State on July 18, 1979. Rule 203(f) governing fugitive dust emissions was effective in the state on September 18, 1979.

(21) On January 25, 1980, the State submitted a copy of finally enacted "Rules for the Issuance of Permits to New or Modified Air Pollution Sources Affecting Nonattainment Areas." Sections 5.1(a)(2)(ii) and 5.1(a)(2)(iii) of these rules were reserved by the State. The effective date of these Rules was January 16, 1980.

§ 52.721 [Heading Revised]

2. Section 52.721 is revised by changing the heading "Photochemical Oxidants (hydrocarbons)" to "Ozone".

3. Section 52.722 is revised to read as follows:

§ 52.722 Approval status.

With the exceptions set forth in this subpart, the Administrator approved Illinois' plan for the attainment and

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

4. Section 52.723 is revised as follows:

§ 52.723 Extensions.

(a) The Administrator hereby extends until December 31, 1987 the attainment date for the national standards for CO and O₃ in the Northeastern Illinois (Chicago) nonattainment area.

(b) The Administrator hereby extends until December 31, 1987 the attainment date for the national O₃ standard in the Illinois portion of the St. Louis Metropolitan nonattainment area.

5. Section 52.724 is revised as follows:

§ 52.724 Control strategy: sulfur dioxide.

(a) Part D—Conditional Approval—The Illinois plan is approved provided that the following condition is satisfied:

(1) The plan includes a reanalysis of the Pekin, Illinois area, a submittal of the analysis results to USEPA; the proposal of any necessary, additional regulations to the Illinois Pollution Control Board to insure attainment and maintenance of the sulfur dioxide standard; and the promulgation of any necessary regulations. Any promulgated regulations must be submitted to USEPA.

6. Section 52.725 is revised as follows:

§ 52.725 Control strategy: particulates.

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

(1) The State utilizes emission factors for determining potential emissions, promulgates rules specifying the manner in which these emission factors will be used, and submits these rules to the Illinois Secretary of State and USEPA.

(2) The State conducts an analysis of the potential air quality impact from storage piles with uncontrolled emissions of less than 50 tons/year, submits the results of the analysis to USEPA, submits any necessary regulations to the Illinois Pollution Control Board, and promulgates and submits any necessary regulations to USEPA.

(b) Part D—Disapproval—USEPA disapproves the provisions of Rule 203(f) which allow the use of an equivalent method without review and approval of that method. Any source subject to Rule 203(f) which chooses to use an equivalent method must have that equivalent method submitted to USEPA and approved as a SIP revision. This disapproval does not in and of itself result in the growth restrictions of section 110(a)(2)(I).

(c) Part D—No Action—USEPA takes no action on the adequacy of rules submitted by Illinois to control particulate emissions from the iron and steelmaking industry.

7. Section 52.726 is revised as follows:

§ 52.726 Control Strategy: Ozone

(a) Part D—Conditional Approval—The Illinois plan is approved provided that the following conditions are satisfied.

(1) The State conducts a study to demonstrate that the three pound per hour, 15 pound per day exemption for solvent metal cleaners contained in Rule 205(k) represents reasonably available control technology (RACT), submits the results of the study to USEPA and, submits any necessary revisions to the regulations to the Illinois Pollution Control Board, promulgates any necessary revised regulations and submits them to USEPA.

(2) The State conducts a study to demonstrate that the 75% overall control efficiency requirement in Rule 205(n) represents RACT, submits the results of the study to USEPA, submits any necessary regulations representing RACT to the Illinois Pollution Control Board, promulgates and submits any necessary regulations to USEPA.

(b) Part D—Disapproval—USEPA disapproves the compliance schedule in Rule 205(j) as it applies to loading rack controls for all emission sources subject to Rule 205(b)(1), as approved by USEPA on May 31, 1972, which were required to be in compliance by December 31, 1973. This disapproval does not in and of itself result in the growth restrictions of section 110(a)(2)(I).

8. Section 52.727 is revised to read as follows:

§ 52.727 Attainment Dates for National Standards.

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

Air quality control region and nonattainment area	Pollutants					
	TSP		SO ₂		NO _x	CO
	Primary	Secondary	Primary	Secondary		
Burlington-Keokuk Interstate (AQCR 65):						
a. Primary and Secondary Nonattainment Areas.	e	g	e		e	e
b. Remainder of AQCR.	c	c	c	c	c	c
East Central Illinois Intrastate (AQCR 66):						
a. Primary and Secondary Nonattainment Areas.	g					e
b. Remainder of AQCR.	c	c	c	c	c	c
Metropolitan Chicago Interstate (Indiana-Illinois) (AQCR 67):						
a. Primary and Secondary Nonattainment Areas.	e	g			e	f
b. Remainder of AQCR.	c	c	c	c	c	c
Metropolitan Dubuque Interstate (AQCR 68):						
a. Primary and Secondary Nonattainment Areas.	g					
b. Remainder of AQCR.	c	c	c	c	c	c
Metropolitan Quad Cities Interstate (AQCR 69):						
a. Primary and Secondary Nonattainment Areas.	e	g				e
b. Remainder of AQCR.	c	c	c	c	c	c
Metropolitan St. Louis Interstate (Missouri-Illinois) (AQCR 70):						
a. Primary and Secondary Nonattainment Areas.	e	g				f
b. Remainder of AQCR.	c	c	c	c	c	c
North Central Illinois Intrastate (AQCR 71):						
a. Primary and Secondary Nonattainment Areas.	e	g				e
b. Remainder of AQCR.	c	c	c	c	c	c
Paducah (Kentucky)-Cairo (Illinois) Interstate (AQCR 72):						
a. Primary and Secondary Nonattainment Areas.	g	e	g			
b. Remainder of AQCR.	c	c	c	c	c	c
Rockford (Illinois)-Janesville-Beloit (Wisconsin) Interstate (AQCR 73):						
a. Primary and Secondary Nonattainment Areas.	g					e
b. Remainder of AQCR.	c	c	c	c	c	c
Southeast Illinois Intrastate (AQCR 74):						
a. Primary and Secondary Nonattainment Areas.	g					e
b. Remainder of AQCR.	c	c	c	c	c	c
West Central Illinois Intrastate (AQCR 75):						
a. Primary and Secondary Nonattainment Areas.	e	g				e
b. Remainder of AQCR.	c	c	c	c	c	c

a. Three years from plan approval or promulgation.

b. Air quality levels presently below primary standards or area is unclassified.

c. Air quality levels presently below secondary standards or area is unclassified.

d. July 1975.

NOTE.—Dates or footnotes which are italicized are prescribed by the Administrator because the plan did not provide a specific date or the date provided was not acceptable. These dates may be changed through revisions to the SIP by the State.

NOTE.—Sources subject to the plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with these requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.727.

NOTE.—For actual nonattainment designations, refer to 40 CFR Part 81.

9. Section 52.178 is revised as follows:

§ 52.728 Control strategy: Nitrogen Dioxide.

(a) Part D—Conditional Approval—The Illinois plan is approved provided that the following condition is satisfied:

(1) The State conducts analyses to determine the need to revise the SIP for nitrogen dioxide, develops any necessary additional regulatory proposals, promulgates any necessary regulations, and submits them to USEPA.

10. Section 52.729 is amended by adding new paragraph (b) to read as follows:

§ 52.729 Control Strategy: Carbon Monoxide.

(b) Part D—Conditional Approval—The Illinois plan is approved provided that the following condition is satisfied:

(1) The State corrects the deficiencies in the transportation control plans for

the Peoria Metropolitan Area and the Northeastern Illinois (Chicago).

11. Section 52.737 is revised to read as follows:

§ 52.737 Transportation Control Plans.

(a) Part D—Conditional Approvals—The transportation control plan for the Peoria Metropolitan Area is approved provided that the following conditions are satisfied:

(1) The State provides a more detailed description of the transportation planning process.

(2) The State provides a description of procedures to annually determine the consistency and conformity of the transportation plan with the SIP.

(3) The State details how the emissions impact of implemented transportation projects will be annually assessed.

(4) The State assesses the social, economic, health, energy, air quality,

and welfare impacts of transportation control measures.

(5) The State identifies all potential CO hotspots in the Peoria Metropolitan Area and develops an acceptable strategy for eliminating them.

(6) The State identifies a mechanism for informing elected officials and implementors of progress towards meeting emission reduction goals and projects needed to meet these goals.

(b) Part D—Conditional Approvals—The transportation control plan for the Northeast Illinois (Chicago) Area is approved provided that the following conditions are satisfied:

(1) The State submits a schedule identifying transportation study areas.

(2) The State submits additional information on the objectives of the Chicago Areas Transportation Study Air Quality Advisory Committee.

(3) The State submits formally adopted representative air quality measures from the Transportation Improvement Programs and Transportation System Management programs. The State reviews the transportation plan, makes changes documenting air quality planning in the transportation sector.

(4) The State identifies both the cost of implementing strategies and available funding sources.

(5) The State explains the approach used in evaluating emission reductions from transportation projects.

(6) The State submits implementor commitments upon completion of the alternatives analysis.

(7) The State documents specific mobile source emission decreases.

(8) The State identifies procedures for annually determining the consistency and conformity of the transportation control plan with the SIP.

(9) The State submits additional information on reasonable further progress in eliminating carbon monoxide hotspot intersections and links.

(c) Part D—Conditional Approval—The transportation control plan for the Illinois portion of the St. Louis Metropolitan Area is approved provided that the following conditions are satisfied:

(1) The State submits implementor commitments upon completion of the alternatives analysis.

(2) The State submits additional information including funding sources concerning a credit taken in the transportation control plan for a fifty percent increase in mass transit ridership.

§ 52.736 [Revised]

12. Section 52.736 is revoked because of legal termination by Section 110(a)(5) of the Clean Air Act (42 U.S.C. 7410(a)(5)) and is revised to read as follows:

(a) Part D—Conditional Approval—The Illinois plan is approved provided that the following condition is satisfied:

(1) The State submits a determination signed by the Illinois' Attorney General that the promulgation of the New Source Review rules is consistent with Illinois law; or, in the alternative, submits to USEPA for approval another nonattainment area New Source Review plan which is consistent with Illinois law and meets the requirements of Sections 172(b)(6) and 173 of the Clean Air Act.

[FR Doc. 80-5301 Filed 2-20-80; 8:45 am]

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40 CFR Part 52

[FRL 1417-5]

Approval and Promulgation of State Implementation Plan; Revision for Michigan; Correction

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rulemaking; correction.

SUMMARY: On December 21, 1979 (44 FR 75635) the U.S. Environmental Protection Agency (USEPA) published a Notice of Final Rulemaking, citing final approval of the Michigan Air Pollution Control Commission's Order as a revision to the Michigan Implementation Plan (SIP). The Order extends the compliance date for meeting sulfur dioxide emission limitations to January 1, 1985, subject to certain conditions.

The conditions outlined under Section (D) (Excursions Above Air Quality Standards) on page 75636, omitted a line of type. The notice read, "An excursion is a single ambient concentration above 365 $\mu\text{g}/\text{m}^3$ (0.14 ppm) calculated on a running 3-hour average." It should have read, "An excursion is a single ambient concentration above 365 $\mu\text{g}/\text{m}^3$ (0.14 ppm) calculated on a running 24-hour average or above 1,300 $\mu\text{g}/\text{m}^3$ (0.50 ppm) calculated on a running 3-hour average. On page 75635, in the summary, the Notice of Proposed Rulemaking page number was incorrectly listed as July 12, 1979 (44 FR 26765). The page number of the notice should have read (44 FR 40655). This correction notice contains the omitted information and the correct page number of the Notice of Proposed Rulemaking.

FOR FURTHER INFORMATION CONTACT:

Mr. Gary Gulezian, Acting Chief, USEPA, Region V, Regulatory Analysis Section (312) 886-6053.

WRITTEN COMMENTS SHOULD BE SENT TO: Mr. Gary Gulezian, Acting Chief, USEPA, Region V, Regulatory Analysis Section, 230 South Dearborn Street, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: In the Notice of Final Rulemaking (44 FR 75635, December 21, 1979) USEPA published supplementary information regarding the conditions for extending the sulfur dioxide emission limitations compliance date to January 1, 1985 for the Detroit Edison Monroe County Power Plan in Michigan.

This correction notice adds the additional information to Section D (Excursions Above Air Quality Standards) on page 75636 of the December 21, 1979 (44 FR 75635). The corrected version should read as follows:

(An excursion is a single ambient concentration above 365 $\mu\text{g}/\text{m}^3$ (0.14 ppm) calculated on a running 24-hour average or above 1,300 $\mu\text{g}/\text{m}^3$ (0.50 ppm) calculated on a running 3-hour average.)

Also in the summary, on page 75635 of the notice, the page for the Notice of Proposed Rulemaking was incorrectly cited as 26765. The page number of the Notice should have read 44 FR 40655.

(42 U.S.C. 7410)

Dated: February 11, 1980.

John McGuire,
Regional Administrator.

[FR Doc. 80-5381 Filed 2-20-80; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 27

Nondiscrimination on the Basis of Handicap in Federally-Assisted Programs; Intent to Prepare an Environmental Impact Statement; Scoping Meeting

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Intent to Prepare Environmental Impact Statement (EIS) and Notice of Scoping Meeting.

SUMMARY: The Department of Transportation has been ordered by the U.S. District Court for the District of Columbia to prepare an environmental impact statement (EIS) on its regulation (49 CFR Part 27) implementing section 504 of the Rehabilitation Act of 1973. The regulation addresses the accessibility of federally assisted