to accomodate a new instrument approach procedure at Canyonlands Field Airport, Moab, Utah. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts for pilots.

DATES: Comments must be received on or before November 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–29, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 93–ANM–29, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–29." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM'S should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Moab, Utah, to accommodate a new instrument approach procedure at Canyonlands Field Airport. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Moab, UT [Revised]

Canyonlands Field Airport, UT
(Lat. 38°45'18"N, Long. 109°45'17"W)
Moab VOR/DME
(Lat. 38°45'22"N, Long. 109°44'58"W)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of the Canyonlands Field Airport, and within 6.1 miles northeast and 8.7 miles southwest of the Moab VOR/DME 301° radial extending from the 8.7-mile radius to 16.1 miles northwest of the airport and within 2 miles each side of the 040° bearing from Canyonlands Field Airport extending from the 8.7-mile radius to 10 miles northeast of the airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by V–134, on the east by V–391, on the south by V–244, and on the west by V–208, excluding the Price Carbon County Airport, Utah, and the Grand Junction, Walker Field, Co. Class E Airspace Areas and all Federal airways.

* * * * *

Issued in Seattle, Washington, on September 14, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–24147 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM93–24–000]

Revision of Fuel Cost Adjustment Clause Regulation Relating to Fuel Purchases From Company-Owned or Controlled Source; A Notice of Proposed Rulemaking

September 24, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to state that where a regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or company-controlled source, and exercises that jurisdiction to approve such price, the Commission will presume, subject to rebuttal, that the cost of fuel so purchased is reasonable and includable in the fuel adjustment clause.

DATES: An original and 14 copies of the written comments on this proposed rule change must be filed with the Commission by November 1, 1993. All comments should reference Docket No. RM93–24–000.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Wayne W. Miller, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0466.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to revise 18 CFR 35.14(a)(7) to make clear that where a regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or controlled source, and exercises that jurisdiction to approve such price, the cost of fuel so purchased shall be presumed, subject to rebuttal (rather than conclusively "deemed"), to be reasonable and includable in the fuel cost adjustment clause.

II. Public Reporting Burden

This proposed rule, if adopted, will not have an impact on the reporting burden or the information collection requirements of this regulatory section. These requirements were previously submitted to the Office of Management and Budget and assigned control number 1902–0096.

Interested persons may send comments regarding this collection of information to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, (202) 208–1415]; and to the Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

III. Discussion

A. Section 35.14(a)(7)

Section 35.14(a)(7) addresses contracts governing utilities' purchases of fuel from company-owned or controlled suppliers and the recovery of the costs of the fuel in the fuel cost adjustment clause. It provides, in pertinent part, that where the utility purchases fuel from a company-owned or controlled source, the price of which is subject to the jurisdiction of a regulatory body, such cost shall be "deemed" to be reasonable and includable in the fuel cost adjustment clause.

B. The Ohio Power Proceeding

On remand from the Supreme Court in *Arcadia* v. *Ohio Power Company*, 111 S. Ct. 415 (1990), the DC Circuit, in *Ohio Power Company* v. *FERC*, 954 F.2d 779 (DC Cir.), *cert. denied*, 113 S. Ct. 483 (1992) (*Ohio Power*), held, *inter alia*, that § 35.14(a)(7) establishes a conclusive presumption that the price for an inter-affiliate fuel purchase subject to the jurisdiction of a regulatory body is just and reasonable and, accordingly, cannot be upset by the Commission. In analyzing the meaning of § 35.14(a)(7), the court focused on the meaning of the word "deemed," finding that it establishes a conclusive presumption regarding the reasonableness of an inter-affiliate fuel price subject to another regulatory body's jurisdiction. The court rejected the Commission's position that the word "deemed" sets only a rebuttable presumption. Thus, according to the court, the Commission must accept as reasonable and conclusively lawful whatever price the other regulatory body approves for an inter-affiliate fuel purchase transaction.[1]

C. The Need to Revise § 35.14(a)(7) in Light of the Ohio Power Proceeding

In light of *Ohio Power*, the Commission believes it is necessary to amend § 35.14(a)(7) to state that when a regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or controlled source and exercises that jurisdiction by approving such price, such cost shall be "presumed, subject to rebuttal" (rather than conclusively "deemed"), to be reasonable and includable in the fuel cost adjustment clause.

Even if the standards of review of other regulatory bodies were identical to those of this Commission, and even if a detailed review was made by such a body,[2] the Commission has an

[1] The DC Circuit also determined that Congress, in section 13(b) of the Public Utility Holding Company Act of 1935 (PUHCA): (1) authorized the Securities and Exchange Commission (SEC) to review the price of inter-affiliate fuel purchases among members of a registered public utility holding company system; and (2) barred the Commission from altering that SEC-reviewed price pursuant to its "just and reasonable" ratemaking authority under the Federal Power Act (FPA). 954 F.2d at 784–86. The court found that the SEC-approved price acts as both a ceiling and a floor for the price of affiliate fuel. *Id.* at 782–85.

[2] Section 35.14(a)(7), as presently promulgated and interpreted by the court, provides for a presumption of reasonableness to attach whenever the price of the fuel "is subject to the jurisdiction of a regulatory body." The regulation does not require that the standard of review applied by that regulatory body be the "just and reasonable" standard of the FPA. Likewise, the regulation does not require that the regulatory body conduct a particular review or, indeed, conduct any review at all. So long as the price of fuel is merely subject to the regulatory body's jurisdiction, the regulation provides for a conclusive presumption of reasonableness § 35.14(a)(7) to provide that only if:

Continued

independent obligation under sections 205(a) and 206(a) of the FPA [3] to ensure that rates are "just and reasonable." This obligation requires the Commission to independently review rates subject to its jurisdiction to ensure that they are "just and reasonable." While the Commission can give deference to decisions of another regulatory body and still fulfill its statutory obligation, it cannot in effect delegate its jurisdictional responsibilities to others.[4] In addition, the Commission must exercise greater regulatory scrutiny when affiliate fuel costs are at issue; while there may be a presumption of reasonableness as to costs incurred in arm's-length bargaining, there is no such presumption of reasonableness as to affiliate costs. See, *e.g.*, 954 F.2d at 785 (referring to economic incentive for associated companies to pass through inflated costs for goods); *accord, e.g., Philadelphia Electric Company*, 58 FERC ¶61,060 at 61,134 (1992) (noting that in recent orders the Commission explained that an affiliated relationship between buyers and sellers raises potential for self-dealing and other forms of abuse); *Louisiana Public Service Commission* v. *Arkansas Power & Light Company, et al.*, 44 FERC ¶61,392 at 62,269 (1988) (agreement between affiliated entities cannot be presumed to be as fair as compared to agreements between independent entities); *Public Service Co. of New Mexico*, Opinion No. 133, 17 FERC ¶61,123 at 61,245 (1981), *order on reh'g*, Opinion No. 133–A, 18 FERC ¶61,036 (1982), *aff'd in relevant part*, 832 F.2d 1201, 1213 (10th Cir. 1987) (affiliate coal purchases deserve "special scrutiny"); *Louisville Hydro-Electric Co.*, 1 FPC 130, 133, 135–36, 139–42 (1933), *aff'd*, 129 F.2d 126 (6th Cir. 1942), *cert. denied*, 318 U.S. 761 (1943) (no arm's-length bargaining or independence of action is present in affiliate transactions, and as a consequence affiliate transactions deserve special scrutiny); *cf. Western Distributing Company* v. *Public Service Comm'n of Kansas*, 285 U.S. 119, 124–25 (1932). Thus, the Commission believes that § 35.14(a)(7) should be amended to provide that for affiliate transactions the presumption of reasonableness provided for by the regulation is merely rebuttable and is not conclusive.

Amending § 35.14(a)(7) is also consistent with the Commission's mandate under section 205(f) of the FPA [5] to undertake review of automatic adjustment clauses, including fuel cost adjustment clauses, to ensure "economical purchase and use of fuel." Given an express Congressional mandate to ensure "economical purchase and use of fuel," the Commission believes § 35.14(a)(7) should be amended to eliminate what otherwise would be an absolute bar to Commission inquiry into affiliate fuel prices.[6]

In sum, by amending § 35.14(a)(7) to clearly specify that, where another regulatory body has jurisdiction over affiliate fuel costs and approves such costs, there will be a rebuttable presumption of reasonableness of affiliate fuel costs, rather than a conclusive presumption, the Commission is making clear that it has no intention of abdicating its regulatory responsibilities under sections 205 and 206 of the FPA.[7]

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[8] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment—such as electric rate filings under sections 205 and 206 of the FPA and the establishment of just and reasonable rates.[9] The proposed rule involves such matters. Accordingly, no environmental consideration is necessary.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [10] requires rulemakings to either contain a description and analysis of the impact the proposed rule will have on small entities or a certification that the rule will not have a substantial economic impact on a substantial number of small entities. Most public utilities to whom the proposed rule would apply do not fall within the definition of small entity. Consequently, the Commission certifies that this proposed rule will not have "a significant economic impact on a substantial number of small entities."

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations [11] require that OMB approve certain information collection requirements imposed by an agency. This proposed rule neither contains new information collection requirements nor significantly modifies any existing information collection requirements in part 35; therefore, it is not subject to OMB approval. However, the Commission will submit a copy of this proposed rule to OMB for information purposes only.

Interested persons may send comments regarding collection of information to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, (202) 208–1415]; and to the Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

VII. Public Comment Procedures

The Commission invites interested persons to submit written comments on the matters addressed in this Notice of Proposed Rulemaking. An original and

(a) A regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or controlled source; and (b) that regulatory body approves such price, will a rebuttable presumption of reasonableness attach.

[3] 16 U.S.C. 824d(a) and 824e(a).

[4] Additionally, the regulation at present is not limited to a particular regulatory body, and thus extends not only to the SEC but to state commissions and other, local regulatory bodies as well; that is, so long as either the SEC, or a state commission, or a local regulatory body has jurisdiction over the price of the fuel, the conclusive presumption of reasonableness would attach. In this regard, we also note that the regulation is silent as to what happens if two regulatory bodies (*e.g.*, the SEC and a state commission, or two state commissions) have jurisdiction and reach different conclusions as to the reasonableness of the price; the regulation does not identify which of the two regulatory bodies, if either, would bind the Commission.

[5] 16 U.S.C. 824d(f).

[6] Such an amendment is also consistent with the Commission's longstanding position, reiterated as recently as Louisiana Power and Light Company, Opinion No. 366, 57 FERC ¶61,101 at 61,388–89 (1991), that even though costs may be passed through a fuel cost adjustment clause, they nevertheless remain open to later scrutiny. *Accord, e.g., Boston Edison Company* v. *FERC*, 856 F.2d 361, 370 (1st Cir. 1988); *Southern California Edison Company* v. *FERC*, 805 F.2d 1068, 1070–72 (D.C. Cir. 1986); Boston Edison Company, Opinion No. 376, 61 FERC ¶61,026 at 61,145 & n.103 (1992); Alamito Company, 33 FERC ¶61,286 at 61,574 (1985); Appalachian Power Company, 23 FERC ¶61,032 at 61,088 (1983).

[7] The Commission recently stated, in *Municipal Resale Service Customers* v. *Ohio Power Company*, 64 FERC ¶61,034 at 61,334–35 (1993), that other bars to Commission review of the reasonableness of rates that reflect affiliate fuel costs exist in particular circumstances. Amending § 35.14(a)(7) is thus not sufficient to overcome, for example, the DC Circuit's other (and more far-reaching) holding in *Ohio Power* that Congress, in authorizing the SEC under PUHCA to review affiliate fuel prices, acted to constrain this Commission from effectively altering such prices under its "just and reasonable" ratemaking authority. See *supra* note 1. Nevertheless, while we cannot remove all bars, we can and should remove those bars that are within our ability to remove.

[8] Regulations Implementing the National Environmental Policy Act, 52 FR 47987 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–90 ¶30,783 (1987).

[9] 18 CFR 380.4(a)(16).

[10] 5 U.S.C. 601–612.

[11] 5 CFR 1320.13.

14 copies of the comments must be filed with the Commission no later than November 1, 1993. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM93–24–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend part 35, chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 35.14 is amended by revising the second sentence of paragraph (a)(7) to read as follows:

§ 35.14 Fuel cost and purchased economic power adjustment clauses.

(a) * * *

(7) * * * Where the utility purchases fuel from a company-owned or controlled source, the price of which is subject to the jurisdiction of a regulatory body, and where the price of such fuel has been approved by that regulatory body, such costs shall be presumed, subject to rebuttal, to be reasonable and includable in the adjustment clause.* * *

* * * * *

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24169 Filed 9–30–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 990

[Docket No. R–93–1681; FR–2971–P–01]

RIN 2577–AA99

Low-Income Public Housing; Performance Funding System: Cooling Degree Days

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements Section 508 of the Cranston-Gonzalez National Affordable Housing Act requires that the Secretary of HUD include a cooling degree day adjustment factor in determining the component of subsidy eligibility relating to utility consumption under the Performance Funding System. The Act further provides that the method by which a cooling degree day adjustment factor is included shall be identical to the method by which the heating degree day factor is included.

DATES: Comments must be received by November 30, 1993 to assure their consideration.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours in room 10276.

FOR FURTHER INFORMATION CONTACT: For information concerning part 990, Mr. John T. Comerford, Director, Financial Management Division, Office of Assisted Housing, Public and Indian Housing, room 4212, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410, telephone (202) 708–1872.

For information concerning part 905, Mr. Dominic Nessi, Director, Office of Native American Programs, room 4140, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410, telephone (202) 708–1015.

Hearing or speech impaired individuals may call HUD's TDD number, (202) 708–0850. [These telephone numbers are not toll-free.]

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Statement

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. Information on the estimated public reporting burden is provided in section IV. H. Comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent to the U.S. Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503.

II. Statutory Requirement

Section 508 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (104 Stat. 4187) directs the Department to include a cooling degree day adjustment factor to utility consumption in the Performance Funding System (PFS). The Act goes on to state that, "The method by which a cooling degree day adjustment factor is included shall be identical to the method by which the heating degree day adjustment factor is included."

Consistent with the explicit policy stated in the statute, this proposed rule contains a literal implementation of the statutory language. However, the Department is concerned that its implementation of this provision raises some basic questions and could create some major distortions in the funding system. Because of this, it has been determined appropriate to open a discussion of policy alternatives in this Notice of Proposed Rulemaking and to invite public comment on the issues surrounding implementation of this statutory provision.

Because of the potential importance of this change, and because the Department is aware that there are additional factors to consider in calculating cooling load and cost other than ambient temperatures, this Preamble describes three alternate scenarios for addressing the issue of heating and cooling degree day adjustment in the PFS formula. We are inviting public comment on these alternate approaches or suggestions of additional alternatives in anticipation of further rulemaking in the future. The Department will review any public

comments received in response to this invitation in the context of developing a Final Rule and subsequent handbook instructions.

III. Background

First, it is necessary to describe how the heating degree day (HDD) factor works under the current regulation.

At the beginning of the year, the PFS uses a Housing Agency's (HA's) average consumption for a specified three year period as the best estimate of consumption in the coming year. At the end of the year there is a 50/50 sharing with the Department of the cost of savings of any consumption over or below this estimate. This builds in an incentive to decrease consumption because HAs get to keep half of the savings, and protects HAs from the full impact of increases in consumption. Before the 50/50 calculation is made, the estimated full consumption of any meter measuring a utility that is used for heat is adjusted to reflect the difference in heating degree days between the three years used in the estimate and the actual heating degree days in the year which has just ended.

In developing the current system, the Department elected to require HAs to adjust the full consumption of each meter used to measure a utility that supplies heat. An alternate way to design the adjustment would be to take the consumption of any meter supplying both heating and other services and isolating or estimating the amount of consumption attributable to heating and performing the HDD adjustment on that portion. This is possible to do meter by meter. An engineer could look at the month by month electric consumption of a project, the heating degree days or cooling degree days for each month, and estimate how much of the electric consumption in the winter months, was used to supply heat.

While this would be possible, it would be administratively burdensome to require HAs and Field Offices to do something like this for each meter used to supply more than heat. The whole design of the PFS has been an attempt to balance taking detailed HA factors into account against imposing administrative complexity. The current system fits exactly in all cases where a separate meter exists for the heating system, and where oil or steam is used to heat. It has a less accurate fit in cases where a meter measures gas used for heat in combination with hot water and/or cooking. It has the worst fit in cases where a project is heated with electricity and the same meter is used for lighting, appliances, and/or air conditioning.

A literal interpretation of statutory language on cooling degree days poses a potential problem in that the cooling degree day adjustment will be applied to the electric consumption in almost all cases. This means that if a summer is ten percent cooler than the years in the rolling base, the total estimated annual electric consumption for the meter will be reduced by ten percent. We are concerned that there are likely to be many more cases of over or under adjustment with cooling degree days than with heating degree days because cooling is far more likely to be supplied from a meter which also supplies other services.

IV. Proposed Rule

The proposed rule would amend §§ 905.102 and 990.102 (Definitions), §§ 907.715 and 990.107 (Computation of Utilities Expense Level), and §§ 905.730(c) and 990.110(c) (Adjustments to Utilities Expense Level), in order to apply a Cooling Degree Day (CDD) adjustment to the utilities used for air conditioning, which will be identical to the Heating Degree Day adjustment currently applied to the utilities used for space heating.

In developing this proposed rule, the Department has struggled to design a cooling degree day adjustment that would be both equitable and administratively feasible. We explored several alternative approaches and we recognize that there are difficulties inherent in all of the following approaches to implementing a cooling degree day factor adjustment. Comments and suggestions on these or any other approaches that comply with the statutory language are invited. The proposed rule embodies the first approach.

1. Implement cooling degree day adjustment exactly like the heating degree day adjustment. While this is explicitly consistent with statutory direction and administratively feasible to apply, it creates distortions in funding for HAs that provide air conditioning from the same meter that supplies lighting and appliances.

For example, an HA that has one meter to measure its electric consumption, in a project in which there is air conditioning, would adjust the total consumption of this meter by the difference in CDDs between the year that has just ended and the average CDDs for the rolling base period. This would be true even if there were only a few window air conditioning units in the project. This meter measures electric consumption used for appliances and lighting in addition to air conditioning. The following table shows what happens under the current PFS, and under this proposal, when the CDDs for a year are 10 percent higher or lower than those in the rolling base period. For purposes of this example, we have assumed that the actual impact of the 10 percent variation in weather on HA consumption was on three months of the year. As previously explained, the year end adjustment allows HAs to keep half of the savings due to actual consumption lower than the adjusted rolling base and does not fund HAs for half of the increased consumption due to actual consumption higher than the adjusted rolling base. The table shows that the impact of applying the CDD change factor to the total consumption of a meter when only a portion of the meter's consumption is for cooling could result in a substantial distortion of the funding levels for an HA.

CDD season as compared to rolling base	10 percent colder		10 percent warmer	
Regulation	Current PFS	Proposed rule	Current PFS	Proposed rule
Rolling Base	3000 KWH	3000 KWH	3000 KWH	3000 KWH
Rolling Base adjusted for CDD Change Factor	NA	2700 KWH	NA	3300 KWH
Actual Consumption	2925 KWH	2925 KWH	3075 KWH	3075 KWH
PFS Year-End Adjustment [½ of difference between Rolling Base (adjusted if applicable) and Actual Consumption]:				
HA funded for higher level of consumption than actually experienced	37.5 KWH		37.5 KWH	
HA actual consumption not funded by PFS		112.5 KWH		112.5 KWH

2. Isolate the consumption of the meter estimated to be used for heating or cooling by tracking the monthly consumption, and perform an adjustment for cooling and heating degree days to the portion of utilities estimated to be used for heating or cooling. While this tailors the adjustment to individual circumstances and does not create distortions in funding, it would be very burdensome for HAs and Field Offices. The utilities forms which currently report utility consumption by annual totals for each type of utility and deal with degree day adjustments based on annual totals would have to be altered to report on and adjust consumption month by month. An analysis would have to be performed annually to determine, based on the months with no HDDs or CDDs, what portion of the meter use is for heating and air conditioning, and adjusting just that portion by the HDD or CDD change factor for the months with HDDs and CDDs. Instead of one PFS Form for the initial fiscal year calculation, and one for the year-end adjustment, there would need to be a separate form for each utility to show the consumption for each month of the fiscal year. We are concerned about the HA and HUD staff resources that would be required to perform and monitor these calculations.

3. Drop all degree day adjustments in the PFS. It is important to note in this context that public housing residents who buy their own utilities have a utility allowance that is not adjusted for weather. This approach would greatly simplify the PFS. It would eliminate the need to separately track the consumption of each meter used to supply heating or air conditioning. This would reduce paperwork and the administrative burden on the Department and the Housing Agencies. It would eliminate the need to wait for publication of the degree day factors before adjustments can be made. This three month delay also affects the ability to develop ratings under the Public Housing Management Assessment Program (PHMAP). On the negative side, HAs would get only 50 percent adjustment for consumption, without further adjustment to reflect weather conditions. Assuming that weather averages out over time, there would be no long term penalty or bonus.

V. Findings and Certifications

A. Environmental Review

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981, and therefore no regulatory impact analysis is necessary. It will not have an annual effect on the economy of $100 million or more. Furthermore, it will not cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule may result in changes in the level of operating subsidy eligibility for certain public housing agencies, but we have no reason to believe that it would have disproportionate effect on small HAs.

D. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under the Order. The rule refines an established formula under which HUD calculates operating subsidies for low-income housing developments, but contains no requirement for explicit action by local officials and will not interfere with State or local governmental functions.

E. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule would not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

F. Regulatory Agenda

This rule is listed as item 1568 under the Office of Public and Indian Housing in the Department's semiannual agenda of regulations published on April 26, 1993 (58 FR 24382, 24435), under Executive Order 12291 and the Regulatory Flexibility Act.

G. Catalog

The Catalog of Federal Domestic Assistance Program numbers for this rule are 14.146 and 14.147.

H. Public Reporting Burden

The Department has estimated the public reporting burden involved in the information collections contained in the rule as shown below. The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

PUBLIC REPORTING BURDEN

[Performance Funding System: Cooling Degree Days]

Section of regulation	No. of respondents	No. responses/ respondent	Hours per response	Total hours
905.715(d)				
905.730(c)				

PUBLIC REPORTING BURDEN—Continued

[Performance Funding System: Cooling Degree Days]

Section of regulation	No. of respondents	No. responses/respondent	Hours per response	Total hours
990.107(d) 990.110(c)	1,486	1	1½	2,229

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, Homeownership, Public housing, Reporting and record keeping requirements.

24 CFR Part 990

Grant programs—housing and community development; Public housing, Reporting and record keeping requirements.

Accordingly, 24 CFR Parts 905 and 990 are proposed to be revised as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 would continue to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

2. In § 905.102, a new definition of *Cooling Degree Days* would be added, in alphabetical order; the second sentence of the definition of "Allowable Utilities Consumption Level (AUCL)" would be revised; and the definition of "Change Factor" would be revised, to read as follows:

§ 905.102 Definitions.

* * * * *

Allowable Utilities Consumption Level (AUCL). * * * After the end of the Requested Budget Year, the AUCL for the utility(ies) used for space heating and (where applicable) for air conditioning will be adjusted by a Change Factor, as described in this section.

* * * * *

Change Factor. The Change Factor applied to the consumption of a meter used to provide space heating is the ratio of the affected IHA fiscal year heating degree days (HDDs) divided by the average annual HDDs of the Rolling Base Period. The Change Factor applied to the consumption of a meter used to provide air conditioning is the ratio of the affected IHA fiscal year cooling degree days (CDDs) divided by the average annual CDDs of the Rolling Base Period. The Change Factor applied to the consumption of a meter used to provide both space heating and air conditioning is the ratio of the sum of the affected IHA fiscal year Heating Degree Days (HDDs) and Cooling Degree Days (CDDs) divided by the sum of the average annual HDDs and CDDs of the Rolling Base Period.

* * * * *

Cooling Degree Days. The annual arithmetic sum of the positive difference (those over 65 degrees) of the average of the lowest and highest daily outside temperatures in degrees Fahrenheit, subtracted from 65 degrees Fahrenheit.

* * * * *

3. In § 905.715, the last sentence of paragraph (a), paragraph (c)(4)(ii), the introductory text of paragraph (d), the introductory text of paragraph (d)(1)(i) preceding the example, the introductory text of paragraph (d)(1)(ii) preceding the example, paragraph (d)(2)(i) and paragraph (f) would be revised, and paragraph (d)(2)(iii) would be added, to read as follows:

§ 905.715 Computation of utilities expense level.

(a) * * * The AUCL for utilities for space heating and for air conditioning will be adjusted after the end of the affected fiscal year pursuant to the instructions of paragraph (d) of this section.

* * * * *

(c) * * *

(4) * * *

(ii) See § 905.730(c)(2)(ii) for the method of adjusting the AUCL for heating degree days and for cooling degree days.

* * * * *

(d) *Adjustment to utilities used for space heating and for air conditioning.* For project utilities with consumption data for the entire Rolling Base Period, and for New Projects, consumption of utilities used for space heating and for air conditioning shall be adjusted, after the end of the affected year, using a Change Factor as follows:

(1) *Adjustment of the Rolling Base Period data*—(i) *Use of Change Factors.* A Change Factor will be developed each year that indicates the relationship of the affected IHA fiscal year HDDs to the average HDDs of the Rolling Base Period. This Change Factor is to be used to establish an AUCL for utilities used for space heating that reflects the severity of the winter weather of the affected IHA fiscal year. Similarly, a Change Factor will be developed by HUD that indicates the relationship of the affected IHA fiscal year CDDs to the average CDDs of the Rolling Base Period. The Change Factors are developed by the National Climatic Center of the Department of Commerce for each established standard weather division of the country, by IHA fiscal year. Change Factors will be supplied by HUD to the IHAs. When a Change Factor is greater than 1.000, it means that the HDDs (or CDDs) of the affected fiscal year were greater than the average annual HDDs (or CDDs) of the Rolling Base Period. An example of the effect of the Change Factor on the Rolling Base Period consumption is: * * *

(ii) *Application of Change Factor to consumption of the Rolling Base Period.* The Change Factor is to be applied only to the consumption readings of meters of utilities, or gallons of oil, or tons of coal used for the purpose of generating heat or air conditioning, for dwelling units and other IHA-associated buildings. The Change Factor shall not be applied to the consumption readings of meters of utilities not used for the purpose of generating heat or air conditioning; e.g., water and sewer or electricity used solely for non-heating and non-cooling purposes. The Change Factor shall be applied to the total consumption reading of meters of utilities, or gallons of oil, or tons of coal, used for heating (or air conditioning) even though the same meter or same energy source is used for other purposes; e.g., heating and cooking gas usage metered on the same meter, or oil used for space heating and also heating of water. Such consumption for each fiscal year of the Rolling Base Period

shall be adjusted by the Change Factor. The adjusted consumption for each year shall be totalled. These totals then will be averaged. The consumption readings of meters of utilities not used for heating (or cooling), which are not adjusted by the Change Factor, shall be included in the total consumption.

* * * * *

(2) *Adjusted consumption for New Projects*—(i) *Use of Change Factor.* For New Projects, the IHA shall apply the Change Factor to the HUD-approved consumption level of utilities used for heating and for cooling.

* * * * *

(iii) *Application of Change Factor to consumption of New Projects.* The annual AUCL for New Projects shall be adjusted by applying the Change Factor to the estimated consumption where the utility is used for heating or for cooling, in part or in total. This consumption shall be from a comparable project during the permissible Rolling Base Period. Any other consumption of this utility that is not used for heating, or for cooling, shall not be adjusted by the Change Factor, but the estimated annual consumption based upon data from a comparable project during the permissible Rolling Base Period shall be added to the adjusted consumption.

* * * * *

(f) *Adjustments.* IHAs shall request adjustments of Utilities Expense Levels in accordance with § 905.730(c), which requires an adjustment based upon a comparison between actual experience and estimates of consumption (after adjustment for heating degree days and for cooling degree days, in accordance with paragraph (d) of this section) and of utility rates.

* * * * *

§ 905.730 [Amended]

4. In § 905.730, paragraph (c)(2) would be amended by adding, in paragraph (c)(2)(i), after the term "heating degree days", the phrase, "and cooling degree days,"; by adding, in the second sentence of paragraph (c)(2)(ii), after the phrase, "space heating utilities", the phrase "and for air conditioning utilities,"; by adding, in the third sentence of paragraph (c)(2)(ii), after the phrase "heating degree day", the phrase "and cooling degree day". In addition, in § 905.730, paragraph (e)(1)(i) would be amended by adding, after the phrase "Heating Degree Days", the phrase "and Cooling Degree Days".

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

5. The authority citation for part 990 would continue to read as follows:

Authority: 42 U.S.C. 1437(g) and 3535(d).

6. In § 990.102, a new definition of *Cooling Degree Days* would be added, in alphabetical order; the second sentence of the definition of "Allowable Utilities Consumption Level (AUCL)" would be revised; and the definition of "Change Factor" would be revised, to read as follows:

§ 990.102 Definitions.

* * * * *

Allowable Utilities Consumption Level (AUCL). * * * After the end of the Requested Budget Year, the AUCL for the utility(ies) used for space heating and (where applicable) for air conditioning will be adjusted by a Change Factor, as described in this section.

* * * * *

Change Factor. The Change Factor applied to the consumption of a meter used to provide space heating is the ratio of the affected PHA fiscal year heating degree days (HDDs) divided by the average annual HDDs of the Rolling Base Period. The Change Factor applied to the consumption of meter used to provide air conditioning is the ratio of the affected PHA fiscal year cooling degree days (CDDs) divided by the average annual CDDs of the Rolling Base Period. The Change Factor applied to the consumption of a meter used to provide both space heating and air conditioning is the ratio of *the sum of* the affected PHA fiscal year Heating Degree Days (HDDs) and Cooling Degree Days (CDDs) divided by *the sum of* the average annual HDDs and CDDs of the Rolling Base Period.

* * * * *

Cooling Degree Days. The annual arithmetic sum of the positive difference (those over 65 degrees) of the average of the lowest and highest daily outside temperatures in degrees Fahrenheit, subtracted from 65 degrees Fahrenheit.

* * * * *

7. In § 990.107, the last sentence of paragraph (a), paragraph (c)(4)(ii), the introductory text of paragraph (d), the introductory text of paragraph (d)(1)(i) preceding the example, the introductory text of paragraph (d)(1)(iii) preceding the example, paragraph (d)(2)(i) and paragraph (f) would be revised, and paragraph (d)(2)(iii) would revised, to read as follows:

§ 990.107 Computation of utilities expense level.

(a) * * * The AUCL for utilities for space heating and for air conditioning will be adjusted after the end of the affected fiscal year pursuant to the instructions of paragraph (d) of this section.

* * * * *

(c) * * *

(4) * * *

(ii) See § 990.110(c)(2)(ii) for the method of adjusting the AUCL for heating degree days and for cooling degree days.

* * * * *

(d) *Adjustment to utilities used for space heating and for air conditioning.* For project utilities with consumption data for the entire Rolling Base Period, and for New Projects, consumption of utilities used for space heating and for air conditioning shall be adjusted, after the end of the affected year, using a Change Factor as follows:

(1) *Adjustment of the Rolling Base Period data*—(i) *Use of Change Factors.* A Change Factor will be developed each year that indicates the relationship of the affected PHA fiscal year HDDs to the average HDDs of the Rolling Base Period. This Change Factor is to be used to establish an AUCL for utilities used for space heating that reflects the severity of the winter weather of the affected PHA fiscal year. Similarly, a Change Factor will be developed by HUD that indicates the relationship of the affected PHA fiscal year CDDs to the average CDDs of the Rolling Base Period. The Change Factors are developed by the National Climatic Center of the Department of Commerce for each established standard weather division of the country, by PHA fiscal year. Change Factors will be supplied by HUD to the PHAs. When a Change Factor is greater than 1.000, it means that the HDDs (or CDDs) of the affected fiscal year were greater than the average annual HDDs (or CDDs) of the Rolling Base Period. An example of the effect of the Change Factor on the Rolling Base Period consumption is: * * *

(iii) *Application of Change Factor to consumption of the Rolling Base Period.* The Change Factor is to be applied only to the consumption readings of meters of utilities, or gallons of oil, or tons of coal used for the purpose of generating heat or air conditioning, for dwelling units and other PHA-associated buildings. The change Factor shall not be applied to the consumption readings of meters of utilities not used for the purpose of generating heat or air conditioning; e.g., water and sewer or electricity used solely for non-heating and non-cooling purposes. The Change Factor shall be applied to the total consumption reading of meters of utilities, or gallons of oil, or tons of coal, used for heating (or air conditioning) even though the same meter or same

energy source is used for other purposes; e.g., heating and cooking gas usage metered on the same meter, or oil used for space heating and also heating of water. Such consumption for each fiscal year of the Rolling Base Period shall be adjusted by the Change Factor. The adjusted consumption for each year shall be totalled. These totals then will be averaged. The consumption readings of meters of utilities not used for heating or cooling, which are not adjusted by the Change Factor, shall be included in the total consumption.

* * * * *

(2) *Adjusted consumption for New Projects*—(i) *Use of Change Factor.* For New Projects, the PHA shall apply the Change Factor to the HUD-approved consumption level of utilities used for heating and for cooling.

* * * * *

(iii) *Application of Change Factor to consumption of New Projects.* The annual AUCL for New Projects shall be adjusted by applying the Change Factor to the estimated consumption where the utility is used for heating or for cooling, in part or in total. This consumption shall be from a comparable project during the permissible Rolling Base Period. Any other consumption of this utility that is not used for heating, or for cooling, shall not be adjusted by the Change Factor, but the estimated annual consumption based upon data from a comparable project during the permissible Rolling Base Period shall be added to the adjusted consumption.

* * * * *

(f) *Adjustments.* PHAs shall request adjustments of Utilities Expense Levels in accordance with § 990.110(c), which requires an adjustment based upon a comparison between actual experience and estimates of consumption (after adjustment for heating degree days and for cooling degree days, in accordance with paragraph (d) of this section) and of utility rates.

* * * * *

§ 990.110 [Amended]

8. In § 990.110, paragraph (c)(2) would be amended by adding, in paragraph (i), after the term "Heating Degree Days", the phrase, "and Cooling Degree Days,"; by adding, in the second sentence of paragraph (ii), after the phrase, "space heating utilities", the phrase "and for air conditioning utilities,"; by adding, in the third sentence of paragraph (ii), after the phrase "heating degree day", the phrase "and cooling degree day". In addition, in § 990.110, paragraph (e)(1)(i) would be amended by adding, after the phrase "Heating Degree Days", the phrase "and Cooling Degree Days".

Dated: August 17, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–23233 Filed 9–30–93; 8:45 am]

BILLING CODE 4210–33–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1609

Guidelines on Harassment Based on Race, Color, Religion, Gender, National Origin, Age, or Disability

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission is issuing Guidelines covering harassment that is based upon race, color, religion, gender (excluding harassment that is sexual in nature, which is covered by the Commission's Guidelines on Discrimination Because of Sex), national origin, age, or disability. The Commission has determined that it would be useful to have consolidated guidelines that set forth the standards for determining whether conduct in the workplace constitutes illegal harassment under the various antidiscrimination statutes. Thus, these Guidelines consolidate, clarify and explicate the Commission's position on a number of issues relating to harassment. The Guidelines supersede the Commission's Guidelines on Discrimination Because of National Origin.

DATES: Comments must be received by November 30, 1993.

ADDRESSES: Comments should be addressed to the Office of the Executive Secretariat, EEOC, 10th Floor, 1801 L Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's library, room 6502, 1801 L Street, NW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m. Copies of this notice of proposed rulemaking are available in the following alternative formats: Large print, braille, electronic file on computer disk, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4895 (voice) or (202) 663–4399 (TDD).

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Thornton, Deputy Legal Counsel, or Dianna B. Johnston, Assistant Legal Counsel, Office of Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507; telephone (202) 663–4679 (voice) or (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION: This proposed rule is not a major rule for purpose of Executive Order 12291.

The Commission has long recognized that harassment on the basis of race, color, religion, sex, or national origin violates section 703 of title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.* (title VII). The Commission has also recognized that harassment based on age is prohibited by the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.* (ADEA). The Commission has interpreted the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*, and the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.* (ADA), as prohibiting harassment based on a person's disability. Regarding the ADA, see § 1630.12 of the Commission's regulations on Equal Employment Opportunity for Individuals With Disabilities, 56 FR 35,737 (1991) (codified at 29 CFR 1630.12) (1992).

For more than twenty years, the federal courts have held that harassment violates the statutory prohibition against discrimination in the terms and conditions of employment.[1] The Commission has held and continues to hold that an employer has a duty to maintain a working environment free of harassment based on race, color, religion, sex, national origin, age, or disability, and that the duty requires positive action where necessary to eliminate such practices or remedy their effects. The Commission has previously issued guidelines on sex-based harassment that is sexual in nature, EEOC Guidelines on Discrimination Because of Sex, 29 CFR 1604.11 (1992), and guidelines on national origin harassment. EEOC Guidelines on Discrimination Because of National Origin, 29 CFR 1606.8 (1992).

For several reasons, the Commission has determined that there is a need for new guidelines that emphasize that

[1] See, *e.g., Rogers* v. *EEOC*, 454 F.2d 234 (5th Cir. 1971) (segregation of employer's patients on the basis of national origin could create discriminatory work environment for Spanish-surnamed employee affecting the terms, conditions, and privileges of her employment), *cert. denied*, 406 U.S. 957 (1972); *EEOC* v. *International Longshoremen's Ass'n*, 511 F.2d 273 (5th Cir.) (by racially segregating union locals, union denied equal employment opportunities because of the psychological harm inflicted), *cert. denied*, 423 U.S. 994 (1975); *Weiss* v. *United States*, 595 F. Supp. 1050 (E.D. Va. 1984) (patterned use of religious slurs and taunts by co-worker and supervisor against plaintiff violated plaintiff's right to non-discriminatory terms and conditions of employment).

harassment based upon race, color, religion, gender,[2] age, or disability is egregious and prohibited by title VII, the ADEA, the ADA, and the Rehabilitation Act.[3] First, the Commission has determined that it would be useful to have consistent and consolidated guidelines that set forth the standards for determining whether conduct in the workplace constitutes illegal harassment under the various antidiscrimination statutes. Second, because of all the recent attention on the subject of sexual harassment, the Commission believes it important to reiterate and emphasize that harassment on any of the bases covered by the Federal antidiscrimination statutes is unlawful. Third, doing so at this time is particularly useful because of the recent enactment of the Americans with Disabilities Act. Fourth, these guidelines offer more detailed information about what is prohibited than did the national origin guidelines. Finally, they put in guideline form the rule that sex harassment is not limited to harassment that is sexual in nature, but also includes harassment due to gender-based animus.

Section 1606.8 of the National Origin Guidelines will be incorporated into and superseded by these proposed Guidelines on Harassment. This does not represent a change in the Commission's position on harassment; rather, it is an effort to combine and clarify.

Sexual harassment continues to be addressed in separate guidelines because it raises issues about human interaction that are to some extent unique in comparison to other harassment and, thus, may warrant separate emphasis. In addition to the guidelines, more extensive guidance on sexual harassment can be found in EEOC Policy Guidance No. N–915–050, "Current Issues of Sexual Harassment," March 19, 1990 (Sexual Harassment Policy Guidance). The Commission's Sex Discrimination Guidelines remain in effect and there is no change in the Commission's policy regarding sexual harassment.

Proposed § 1609.1(a) reiterates the Commission's position that harassment on the basis of race, color, religion, gender, national origin, age, or disability constitutes discrimination in the terms, conditions and privileges of employment and, as such, violates title VII, the ADEA, the ADA, or the Rehabilitation Act, as applicable. The Supreme Court, in *Meritor Savings Bank* v. *Vinson*, 477 U.S. 57 (1986), endorsed the Commission's position that title VII affords employees the right to work in an environment free from discriminatory intimidation, insult, and ridicule. See also *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 180 (1989) (Court acknowledged that racial harassment was actionable under section 703(a)(1) of title VII).

Proposed § 1609.1(b) sets out the criteria for determining whether an action constitutes unlawful behavior. These criteria are that the conduct: (i) Has the purpose or effect of creating an intimidating, hostile, or offensive work environment; (ii) has the purpose or effect of unreasonably interfering with an individual's work performance; or (iii) otherwise adversely affects an individual's employment opportunities.

It also defines and gives examples of the types of verbal and physical conduct in the workplace that constitute harassment under title VII, and ADEA, the ADA, and the Rehabilitation Act. Actionable harassment includes harassment based on an individual's race, color, religion, gender, national origin, age, or disability, as well as on the race, color, religion, gender, national origin, age, or disability of one's relatives, friends, or associates.

Proposed § 1609.1(c) sets forth the standard for determining whether the alleged harassing conduct is sufficiently severe or pervasive to alter the conditions of employment and create an intimidating, hostile, or abusive work environment. The standard is whether a reasonable person in the same or similar circumstances would find the challenged conduct intimidating, hostile, or abusive. In determining whether that standard has been met, consideration is to be given to the perspective of individuals of the claimant's race, color, religion, gender, national origin, age, or disability.[4] Recent case law on this issue emphasizes the importance of considering the perspective of the victim of the harassment rather than adopting notions of acceptable behavior that may prevail in a particular workplace. See, e.g., *Ellison* v. *Brady*, 924 F.2d 872, 878–79, 55 EPD ¶ 40,520 (9th Cir. 1991); *Robinson* v. *Jacksonville Shipyards*, 760 F.Supp.. 1486, 55 EPD ¶ 40,535 (M.D. Fla. 1991). As the Ellison court observed, applying existing standards of acceptable behavior runs the risk of reinforcing the prevailing level of discrimination. "Harassers could continue to harass merely because a particular discriminatory practice was common * * *." 924 F.2d at 878.

The Commission explicitly rejects the notion that in order to prove a violation, the plaintiff must prove not only that a reasonable person would find the conduct sufficiently offensive to create a hostile work environment, but also that his/her psychological well-being was affected. Compare *Harris* v. *Forklift Systems*, _____F. Supp. _____, 60 EPD ¶ 42,070 (M.D. Tenn. 1990) (plaintiff must prove psychological injury) , *aff'd per curiam*, _____F.2d _____, 60 EPD ¶ 42,071 (6th Cir. 1992), with *Ellison* v. *Brady*, 924 F.2d 872, 878 n.1 (9th Cir. 1991) (plaintiff need not demonstrate psychological effects). The Supreme Court has granted *certiorari* in *Harris*, _____U.S. _____, 60 EDP ¶ 42,072 (1993), and the Commission has joined the Department of Justice in an *amicus curiae* brief opposing the Sixth Circuit rule. Brief for the United States and the EEOC (April 1993) (No. 92–1168).

As noted above, the determination of whether the complained of conduct violates antidiscrimination laws turns on its severity and pervasiveness. Those factors interact. Courts do not typically find violations based on isolated or sporadic use of verbal slurs or epithets; nevertheless, they recognize that an isolated instance of such conduct—particularly when perpetrated by a supervisor—can corrode the entire employment relationship and create a hostile environment. For example, a supervisor's isolated use of inflammatory and patently offensive racial epithets and slurs such as "nigger" and "spic" may be enough to establish a violation. See, *e.g.*, *Rogers* v. *Western-Southern Life Ins. Co.*, 792 F. Supp. 628 (E.D. Wis. 1992) (supervisor's infrequent use of racial comments such as "nigger" and "you Black guys are "too f***ing dumb to be insurance

[2] There are forms of harassment that are gender-based but non-sexual in nature. See *Hall* v. *Gus Construction Co.*, 842 F.2d 1010, 1014 (8th Cir. 1988) (harassment that is not of a sexual nature but would not have occurred but for the sex of the victim is actionable under title VIII); *Robinson* v. *Jacksonville Shipyards*, 760 F. Supp. 1486, 1522 (M.D. Fla. 1991) (harassing behavior lacking sexually explicit content but directed at women and motivated by animus against women is sex discrimination).

Although the Commission has always recognized that gender-based harassment is actionable, the Guidelines on Discrimination Because of Sex describe only conduct of a sexual nature. These proposed guidelines simply state the applicable rule in guideline form. See *Hall* v. *Gus Construction Co.*, 842 F.2d 1010, 1014-(8th Cir. 1988) (EEOC Guidelines emphasize explicitly sexual behavior but do not state that other types of harassment should not be considered).

[3] Indeed, much of sexual harassment law derives from principles developed in the area of racial and national origin harassment. See *Meritor Savings Bank* v. *Vinson*, 477 U.S. 57, 65–66 (1986) (discusses principles of hostile environment harassment developed in racial and national origin harassment cases and applied to sexual harassment).

[4] This standard is consistent with the standard applied to sexual harassment, as set out in the Sexual Harassment Policy Guidance.

agents" created a hostile work environment). See also *Daniels* v. *Essex Group, Inc.*, 937 F.2d 1264, 1274 & n. 4 (7th Cir. 1991) (court noted that even where harasser was a co-worker, one egregious incident, such as performing KKK ritual in workplace, would create hostile environment).

Under title VII, the ADEA, the ADA, and the Rehabilitation Act, all employees should be afforded a working environment free of discriminatory intimidation. Thus, proposed § 1609.1(d) provides that employees have standing to challenge a hostile or abusive work environment even if the harassment is not targeted specifically at them. See, *e.g.*, *Rogers* v. *EEOC*, 454 F.2d 234 (5th Cir. 1971) (discriminatory work environment was created for Spanish-surnamed employee by segregation of employer's patients on the basis of national origin), *cert. denied*, 406 U.S. 957 (1972); *Robinson* v. *Jacksonville Shipyards*, 760 F. Supp. 1486 (M.D. Fla. 1991) ("behavior that is not directed at a particular individual or group of individuals, but is disproportionately more offensive or demeaning to one sex [can be challenged]").

Proposed § 1609.1(e) states that, in determining whether the alleged conduct constitutes harassment, the Commission will look at the record as a whole and the totality of the circumstances, including the nature of the conduct and the context in which it occurs. Whether particular conduct in the workplace is harassing in nature and rises to the level of creating a hostile or abusive work environment depends upon the facts of each case and must be determined on a case-by-case basis.

Proposed § 1609.2(a) applies agency principles to the issue of employer liability for harassment by the employer's agents and supervisory employees. The Supreme Court in *Meritor Savings Bank* v. *Vinson*, 477 U.S. 57 (1986), declined to issue a definitive rule on the issue of employer liability for claims of environmental harassment, but ruled "that Congress wanted courts to look to agency principles for guidance in this area." *Id.* at 72.

Subsection (i) of § 1609.2(a) states that the employer is liable where it knew or should have known of the conduct and failed to take immediate and appropriate corrective action. A written or verbal grievance or complaint, or a charge filed with the EEOC, provides actual notice. Evidence that the harassment is pervasive may establish constructive knowledge.

Subsection (ii) states that the employer is liable for the acts of its supervisors, regardless of whether the employer knew or should have known of the conduct, if the harassing supervisory employee is acting in an "agency capacity." It notes that the Commission will examine the circumstances of the particular employment relationship and the job functions performed by the harassing individual in determining whether the harassing individual is acting in an "agency capacity."

If the employer fails to establish an explicit policy against harassment, or fails to establish a reasonably accessible procedure by which victims of harassment can make their complaints known to appropriate officials, apparent authority to act as the employer's agent is established. In the absence of an explicit policy against harassment and a complaint procedure, employees could reasonably believe that a harassing supervisor's actions will be ignored, tolerated, or even condoned by the employer. This is the same standard of liability for harassment by supervisors applied by the Commission to cases of sexual harassment. See Sexual Harassment Policy Guidance.

Proposed § 1609.2(b) provides that an employer is responsible for acts of harassment in the workplace by an individual's co-workers where the employer, its agents, or supervisory employees knew or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action. This section recognizes that an employer is only liable for non-supervisory employee harassment where it was aware or should have been aware of the harassing conduct.

Proposed § 1609.2(c) provides that, because an employer is obligated to maintain a work environment free of harassment, its liability may extend to acts of non-employees. It states that an employer may be responsible for the acts of non-employees with respect to environmental harassment of employees where the employer, its agents, or supervisory employees knew or should have known of the conduct and failed to take immediate and appropriate corrective action, as feasible. Important factors to consider are the extent of the employer's control over the non-employees and the employer's legal responsibility for the conduct of such non-employees.

Proposed § 1609.2(d) sets forth the Commission's position that taking measures to prevent harassment is the best way to eliminate harassment. It states that an employer should take all steps necessary to prevent harassment from occurring, including having an explicit policy against harassment that is clearly and regularly communicated to employees, explaining sanctions for harassment, developing methods to sensitize all supervisory and non-supervisory employees to issues of harassment, and informing employees of their right to raise and how to raise the issue of harassment under title VII, the ADEA, the ADA, and the Rehabilitation Act. Establishing an effective complaint procedure by which employees can make their complaints known to appropriate officials who are in a position to act on complaints is an important preventive measure.

Regulatory Flexibility Act

The proposed guidelines, if promulgated in final form, are not expected to have a significant economic impact on small business entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 29 CFR Part 1609

Race, color, religion, gender, national origin, age, and disability discrimination.

For the Commission.

Tony E. Gallegos,

Chairman.

For the reasons set forth in the Preamble, the EEOC proposes to add 29 CFR part 1609, §§ 1609.1 and 1609.2, as follows:

PART 1609—GUIDELINES ON HARASSMENT BASED ON RACE, COLOR, RELIGION, GENDER, NATIONAL ORIGIN, AGE, OR DISABILITY

Sec.

1609.1 Harassment.
1609.2 Employer Liability for Harassment.

Authority: 42 U.S.C. 2000e *et seq.*; 29 U.S.C. 621 *et seq.*; 29 U.S.C. 12101, *et seq.*; 29 U.S.C. 701, *et seq.*

§ 1609.1 Harassment.

(a) Harassment on the basis of race, color, religion, gender,[1] national origin,[2] age, or disability constitutes discrimination in the terms, conditions, and privileges of employment and, as such, violates title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.* (title VII); the Age Discrimination in Employment Act, as amended, 29 U.S.C. 621 *et seq.* (ADEA);

[1] These Guidelines cover sex-based harassment that is non-sexual in nature. Sexual harassment is covered by the Commission's Guidelines on Discrimination Because of Sex, 29 CFR 1604.11 (1992).

[2] Because they are more comprehensive, these Guidelines supersede § 1606.8 of the Commission's Guidelines on Discrimination Because of National Origin, 29 CFR 1606.8 (1992).

the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* (ADA); or the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*, as applicable.

(b)(1) Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, or disability, or that of his/her relatives, friends, or associates, and that:

(i) Has the purpose or effect of creating an intimidating, hostile, or offensive work environment;

(ii) Has the purpose or effect of unreasonably interfering with an individual's work performance; or

(iii) Otherwise adversely affects an individual's employment opportunities.

(2) Harassing conduct includes, but is not limited to, the following:

(i) Epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts, that relate to race, color, religion, gender, national origin, age, or disability; [3] and

(ii) Written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of race, color, religion, gender, national origin, age, or disability and that is placed on walls, bulletin boards, or elsewhere on the employer's premises, or circulated in the workplace.

(c) The standard for determining whether verbal or physical conduct relating to race, color, religion, gender, national origin, age, or disability is sufficiently severe [4] or pervasive to create a hostile or abusive work environment is whether a reasonable person in the same or similar circumstances would find the conduct intimidating, hostile, or abusive. The "reasonable person" standard includes consideration of the perspective of persons of the alleged victim's race, color, religion, gender, national origin, age, or disability. It is not necessary to make an additional showing of psychological harm.

(d) An employer, employment agency, joint apprenticeship committee, or labor organization (hereinafter collectively referred to as "employer") has an affirmative duty to maintain a working environment free of harassment on any of these bases.[5] Harassing conduct may be challenged even if the complaining employee(s) are not specifically intended targets of the conduct.

(e) In determining whether the alleged conduct constitutes harassment, the Commission will look at the record as a whole and at the totality of the circumstances, including the nature of the conduct and the context in which it occurred. The determination of the legality of a particular action will be made from the facts, on a case-by-case basis.

§ 1609.2 Employer liability for harassment.

(a) An employer is liable for its conduct and that of its agents and supervisory employees with respect to workplace harassment on the basis of race, color, religion, gender, national origin, age, or disability:

(1) Where the employer knew or should have known of the conduct and failed to take immediate and appropriate corrective action; or

(2) Regardless of whether the employer knew or should have known of the conduct, where the harassing supervisory employee is acting in an "agency capacity." To determine whether the harassing individual is acting in an "agency capacity," the circumstances of the particular employment relationship and the job functions performed by the harassing individual shall be examined. "Apparent authority" to act on the employer's behalf shall be established where the employer fails to institute an explicit policy against harassment that is clearly and regularly communicated to employees, or fails to establish a reasonably accessible procedure by which victims of harassment can make their complaints known to appropriate officials who are in a position to act on complaints.

(b) With respect to conduct between co-workers, an employer is responsible for acts of harassment in the workplace that relate to race, color, religion, gender, national origin, age, or disability where the employer or its agents or supervisory employees knew or should have known of the conduct, and the employer failed to take immediate and appropriate corrective action.

(c) An employer may also be responsible for the acts of non-employees with respect to harassment of employees in the workplace related to race, color, religion, gender, national origin, age, or disability where the employer or its agents or supervisory employees knew or should have known of the conduct and failed to take immediate and appropriate corrective action, as feasible. In reviewing these cases, the Commission will consider the extent of the employer's control over non-employees and any other legal responsibility that the employer may have had with respect to the conduct of such non-employees on a case-by-case basis.

(d) Prevention is the best tool for the elimination of harassment. An employer should take all steps necessary to prevent harassment from occurring, including having an explicit policy against harassment that is clearly and regularly communicated to employees, explaining sanctions for harassment, developing methods to sensitize all supervisory and non-supervisory employees on issues of harassment, and informing employees of their right to raise, and the procedures for raising, the issue of harassment under title VII, the ADEA, the ADA, and the Rehabilitation Act. An employer should provide an effective complaint procedure by which employees can make their complaints known to appropriate officials who are in a position to act on them.

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BILLING CODE 6750–01–M

[3] This includes acts that purport to be "jokes" or "pranks," but that are hostile or demeaning with regard to race, color, religion, gender, national origin, age, or disability. *Snell* v. *Suffolk County*, 782 F.2d 1094, 1098 (2d Cir. 1986) (dressing Hispanic prisoner in straw hat with sign saying "spic" and "[plaintiff's] son") *Rochon* v. *FBI*, 691 F. Supp. 1548, 1551 n.1 (D.D.C. 1988) (characterizing as "pranks" such things as hate mail, threats of castration, use of defaced photographs—including one of plaintiff's children—and forging plaintiff's name to an insurance policy against death and dismemberment is almost as disturbing as the acts themselves).

[4] See, *e.g.*, *Rodgers* v. *Western-Southern Life Ins. Co.*, 792 F. Supp. 628 (E.D. Wis. 1992) (supervisor's infrequent use of racial comments such as "nigger" and "you Black guys are too f***ing dumb to be insurance agents," created a hostile work environment). See also *Daniels* v. *Essex Group, Inc.*, 937 F.2d 1264, 1274 & n.4 (7th Cir. 1991) (court noted that even where harasser was a co-worker, one egregious incident, such as performing KKK ritual in workplace, would create hostile environment).

[5] See Commission Decision Nos. YSF 9–106 (racial harassment), 72–1114 (religious harassment), 71–2725 (gender-based harassment), CCH EEOC Decisions (1973) ¶¶ 6030, 6347, and 6290, respectively; Commission Decision No. 76–41, CCH EEOC Decisions (1983) ¶ 6632 (national origin harassment).

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Bank Secrecy Act Regulations; Transmittal Orders for Funds Transfers and Transmittals of Funds by Financial Institutions; Correction

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule; correction; extension of comment period.

SUMMARY: On August 31, 1993, the Department of the Treasury (Treasury) published a Notice of Proposed Rulemaking Relating to Transmittal Orders for Funds Transfers and Transmittals of Funds by Financial Institutions. 58 FR 46021. The Department of Treasury is making a

technical correction to this proposed rule. In view of this technical correction, the comment period is extended by two weeks.

DATES: Comments are due on or before October 18, 1993.

FOR FURTHER INFORMATION CONTACT: A. Carlos Correa, Office of Financial Enforcement, (202) 622–0400.

SUPPLEMENTARY INFORMATION: In the previous proposal, it was proposed that a financial institution include the name and address of the transmittor of the payment order in any transmittal order. Similarly, an intermediary bank or financial institution would have to include this information if received. The notice should instead provide that the name, address and deposit account number of the transmittor, if the payment is ordered from a deposit account, must be included.

Technical Corrections

(1) On page 46024, middle column, proposed § 103.33(h)(1)(i)(A) is revised to read as follows:

* * * * *

(A) The name and address of the transmittor and the deposit account number of the transmittor, if the payment is ordered from a deposit account;

* * * * *

(2) On page 46024, middle column, proposed § 103.33(h)(1)(ii)(A) is revised to read as follows:

* * * * *

(A) The name and address of the transmittor and the deposit account number of the transmittor;

* * * * *

(3) On page 46024, last column, proposed § 103.33(h)(1)(iii)(A) is revised to read as follows:

* * * * *

(A) The name and address of the transmittor and the deposit account number of the transmittor;

* * * * *

Dated: September 27, 1993.

Faith S. Hochberg,

Acting Assistant Secretary (Enforcement).

[FR Doc. 93–24166 Filed 9–30–93; 8:45 am]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD–FRL–4782–5]

RIN 2060–AE09

Application Sequence for Clean Air Act Section 179 Sanctions

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing a rule governing the order in which the sanctions shall apply under section 179 of the Clean Air Act (Act), as amended, after the EPA makes a finding specific to any State Implementation Plan (SIP) or plan revision required under the Act's nonattainment area provisions and any such implementation plan or revision for which the EPA has made a SIP call. The EPA is proposing that the offset sanction apply in an area 18 months after the date on which the EPA makes a finding with regard to that area and that the highway sanction apply in that area six months following application of the offset sanction. Once this rule is effective, sanctions will apply automatically in the sequence prescribed in all instances in which sanctions are required following applicable findings that the EPA has already made or that the EPA will make in the future, except when the EPA proposes in a separate rulemaking to change the sanction sequence. The public will have an opportunity to comment on any such separate rulemaking. Since the EPA's general approach in applying sanctions under section 179 will be to sequence them in the manner prescribed in this document, this proposal represents the public's opportunity to comment on the sequence in which sanctions shall generally apply under section 179 for the applicable findings the EPA has made or will make in the future.

DATES: Written comments on the proposed EPA action must be received by the EPA at the address indicated in the **ADDRESSES** section on or before November 1, 1993.

ADDRESSES: Written comments should be submitted to the EPA at the docket address indicated. The public docket for this action, A–93–28, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, room M–1500, 1st Floor, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Stoneman, Sulfur Dioxide/Particulate Matter Programs Branch, MD–15, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–0823.

SUPPLEMENTARY INFORMATION: The content of today's preamble is listed in the following outline:

I. Background
- A. Clean Air Act Amendments of 1990
- B. Title I Requirements of the Act
- C. EPA Action on SIP's
- D. Consequences of State Failure

II. Today's Action
- A. Proposal
- B. Sanction Sequencing Proposal
- C. Sanction Effectuation
- D. Opportunity for Comment

III. Miscellaneous
- A. Executive Order 12291
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act

I. Background

A. Clean Air Act Amendments of 1990

The Act, as amended in 1977, contained provisions requiring States to develop SIP's for areas that are designated nonattainment (i.e., nonattainment areas) based on their failure to attain the national ambient air quality standards (NAAQS) for ozone, carbon monoxide (CO), particulate matter (PM–10), sulfur dioxide (SO_2), nitrogen dioxide (NO_2), or lead. Title I of the Clean Air Act Amendments of 1990 [1] (CAAA) revamped the requirements for nonattainment areas. Title I made numerous changes in SIP requirements in general, including provisions governing the EPA's processing of SIP revisions. In addition, the CAAA specifically provided for certain consequences for State failure to meet SIP requirements.

On April 16, 1992 (57 FR 13498) and April 28, 1992 (57 FR 18070), the EPA published a General Preamble for title I of the CAAA that describes the EPA's preliminary views on how the EPA should interpret various provisions of title I of the amended Act, primarily those concerning SIP revisions required for nonattainment areas. This document will refer frequently to the General Preamble for more information on title I provisions summarized here. Note that the public will have the opportunity to comment on the relevant issues expressed in the General Preamble when the EPA proposes to take approval or disapproval action pursuant to notice-and-comment rulemaking on SIP

[1] Public Law No. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

revisions submitted by States. The General Preamble is intended to serve as an advance notice of how the EPA generally intends, in those subsequent rulemakings, to take action on SIP submissions and to interpret various title I provisions.

B. Title I Requirements of the Act

Title I of the CAAA (Provisions for Attainment and Maintenance of NAAQS) primarily amends and supplements title I of the Act (Air Pollution Prevention and Control), addressing on a comprehensive basis the provisions concerning NAAQS attainment by areas designated nonattainment under section 107(d) (42 U.S.C. 7407(d)) of the Act. The General Preamble discusses those requirements which States must address. In some cases, States must satisfy the requirements through a formal submittal to the EPA of a SIP revision, while other requirements necessitate only that States perform certain activities. Four areas of key requirements will be discussed below:

1. Designations/Classifications

The designation and classification requirements in the CAAA amend section 107, the designation provisions, and create new classification provisions in part D (Plan Requirements for Nonattainment Areas) of title I of the Act. The new requirements provide that areas violating the NAAQS (or contributing to a nearby violation of the NAAQS) must be designated nonattainment (section 107(d)). An area may be redesignated to attainment following, among other things, a demonstration that the NAAQS have been attained (section 107(d)(3)(E)).[2] In addition, the amended Act provides for the classification of nonattainment areas based on the severity of the nonattainment problem (sections 181, 186, and 188). Designations and classifications are discussed in the General Preamble at 57 FR 13501–13552 for ozone, CO, PM–10, SO_2, lead, and NO_2 in the specific SIP requirement sections for each pollutant.

2. General Requirements

The CAAA revise various general requirements in section 110 (42 U.S.C. 7410) of the Act. These requirements apply to all plans regardless of the attainment demonstration required. Among other things, these general requirements include procedures for the EPA's review of SIP submittals (section 110(k)), authority for approval of SIP revisions (section 110(l)), and a revised list of requirements for all plans (section 110(a)(2)). The EPA's SIP review procedures are discussed in the General Preamble at pages 13565–13566, and the section 110(a)(2) requirements are discussed in the General Preamble at pages 13556–13557.

3. Part D, Subpart 1 Requirements

The CAAA provide numerous revisions to the general requirements for all designated nonattainment areas, which are set forth in part D, subpart 1. In subpart 1, Congress repealed the 1987 attainment deadlines for ozone and CO and established new attainment deadlines based on an area's classification. Subpart 1 also includes a process governing sanctions for State failure to meet statutory requirements, which is discussed in the General Preamble at pages 13566–13567. Beyond that, it includes revised new source review permit requirements (section 172(c)(5) and section 173, 42 U.S.C. 7503), which are discussed in the General Preamble at pages 13552–13556.

4. Pollutant-Specific Requirements

Pollutant-specific requirements for designated ozone, CO, PM–10, SO_2, NO_2, and lead nonattainment areas are found in part D at subparts 2, 3, 4, and 5, respectively. The EPA has determined that where a conflict exists, the pollutant-specific requirements override the general requirements of part D, subpart 1. Among other things, these pollutant-specific requirements include statutory deadlines by which various elements of the SIP must be submitted to the EPA (e.g., emission inventory, control strategy, attainment demonstration, etc.), as well as statutory deadlines by which nonattainment areas must attain the NAAQS for the different pollutants. The pollutant-specific requirements are discussed in the General Preamble at pages 13501–13552.

C. EPA Action on SIP's

As mentioned above in section I.B.2, section 110(k) contains provisions governing the EPA's review of SIP submittals. The Act provides for a two-stage review of a State plan submittal to the EPA: A determination of whether the SIP is complete, followed by a review of the plan's approvability. The review process is discussed in the General Preamble at 57 FR 13565–13566.

1. Completeness Review

Section 110(k)(1) requires the EPA to promulgate, by August 15, 1991 (within nine months of enactment), minimum criteria that any SIP submittal must meet. The EPA satisfied this requirement by promulgating the criteria on August 26, 1991 (56 FR 42216). The purpose of the completeness review is to provide a procedure for assessing whether a SIP submittal is complete and, therefore, adequate to trigger the Act requirement that the EPA review and take action on the submittal. Thus, the completeness criteria provide criteria that enable States to prepare adequate SIP submittals and a procedure to enable the EPA reviewers to promptly screen SIP submittals, identify those that are incomplete, and return them to the State for corrective action without being required to go through rulemaking.

If a submittal is determined to be complete, the EPA will inform the State by letter of its determination and begin the formal review for approvability. If a submittal is determined to be incomplete, the EPA will notify the State by letter listing the deficiencies. Consistent with section 110(k)(1)(B), the EPA will attempt to make completeness determinations within 60 days of receiving a submittal. However, a submittal will be deemed complete if a completeness determination is not made by the EPA within six months of the EPA's receipt of the submittal.

2. EPA Approval/Disapproval Action

Following the completeness review, the EPA reviews each complete plan for approvability. Under the Act, the EPA may issue a full approval, or full disapproval, or may grant a partial approval, limited approval, or a conditional approval.

a. Full, partial, and limited approval and disapproval. The EPA has authority to fully approve or disapprove a State SIP submittal under section 110(k)(3) (42 U.S.C. 7410(k)(3)). However, in some instances, a State's submission of a SIP or SIP revision will include a provision that does not comply with one or more applicable requirements of the Act. The Agency must disapprove those portions of a SIP submittal that do not meet the applicable requirements of the Act (section 110(k)(3)). Where the deficient portions of a SIP submittal are separable, the EPA will partially approve the remainder of the SIP and disapprove those deficient parts. However, there may be instances where inseparable portions of the SIP submittal are deficient. The EPA has interpreted the Act to provide flexibility

[2] For EPA procedures on being redesignated from nonattainment to attainment, see memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" from John Calcagni to Air Division Directors, Regions I-X, September 4, 1992, which is contained in the docket.

in the instance where a submittal as a whole serves to improve air quality by providing progress toward attainment, reasonable further progress, and/or reasonably available control technology, yet fails to comply with all of the Act's requirements. Such an action, called a limited approval, is not considered a complete action on the SIP submittal. To complete the action, the EPA must also issue a limited disapproval whereby the Agency disapproves the SIP revision request as a whole for failing to meet one or more requirements of the Act.

b. Conditional approval. Under section 110(k)(4), the Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a specified date that is no later than 1 year after the date of the EPA approval of the plan revision that included that commitment. If the EPA finds that the State fails to meet the commitment within that approved time period, the conditional approval would automatically convert into a disapproval.

D. Consequences of State Failure

1. Section 179(a) Scope and Findings

The CAAA revise the law concerning sanctions[3] to address State failures to comply with the requirements of the Act. Under section 179(a) (42 U.S.C. 7509(a)) of the Act, for any plan or plan revision required under part D or required in response to a finding of substantial inadequacy under section 110(k)(5) (42 U.S.C. 7410(k)(5))[4], the Act sets forth four findings[5] that the EPA can make, which may lead to the application of one or both of the sanctions specified under section 179(b) (42 U.S.C. 7509(b)). The four findings are: (1) A finding under section 179(a)(1) that a State has failed, for a nonattainment area, to submit a SIP or an element of a SIP, or that the SIP or SIP element submitted fails to meet the completeness criteria established pursuant to section 110(k); (2) a finding under section 179(a)(2) where the EPA disapproves a SIP submission for a nonattainment area based on its failure to meet one or more plan elements required by the Act; (3) a finding under section 179(a)(3) that the State has not made any other submission required by the Act (including an adequate maintenance plan) or has failed to make any other submission that meets the completeness criteria or has made a required submission that is disapproved by the EPA for not meeting the Act's requirements; or (4) a finding under section 179(a)(4) that a requirement of an approved plan is not being implemented.

2. Implications of Proposed Rulemaking

a. Implementation of the sanctions. Section 179(a) provides that unless the deficiency prompting the finding (i.e., nonsubmittal, disapproval, and nonimplementation) has been corrected within the time periods prescribed therein one of the sanctions in section 179(b) "shall apply, as selected by the Administrator." Therefore, sanctions will apply automatically in the sequence prescribed herein in all instances in which sanctions are applied under section 179(a) following findings under section 179(a)(1)–(4) for part D plans or plan revisions (including calls for part D plans) that the EPA has already made or that the EPA will make in the future, except when the EPA takes a separate action to select sanctions. Note, though, that if the sanction clock elapses for any findings before this action is final and effective and the EPA has not taken independent sanction selection action, the EPA interprets section 179(a) that sanctions shall not apply until the EPA makes the sanction selection through notice-and-comment rulemaking.

The EPA intends to notify States of the automatic application of sanctions by letter from the EPA Regional Administrator to the State Governor notifying the State of the date on which sanctions begin. The EPA will also publish a notice in the **Federal Register** in which the EPA will amend the language being codified by this rulemaking to indicate what areas are subject to the offset and highway sanctions (see § 52.31(e) of today's proposed rule). In addition, if removal of the sanction(s) is warranted (see section III.B.), the EPA will notify the State by letter that the sanction(s) is being removed and amend the regulatory language to reflect that the area is no longer subject to the sanction(s).

b. Making findings. The EPA makes section 179(a) findings of failure to submit and findings of incompleteness via letters from the EPA Regional Administrators to State Governors or other State officers to whom authority has been delegated.[6] The letter itself triggers the sanctions clock. To make findings of failure to submit and findings of incompleteness under section 179(a)(1) and section 179(a)(3), the EPA is not required to go through notice-and-comment rulemaking.[7] For section 179(a)(2) and section 179(a)(3)(B) findings of disapproval, the **Federal Register** notice in which the EPA takes final action disapproving the submittal (typically after notice-and-comment) initiates the sanctions clock. For section 179(a)(4) findings of nonimplementation, the sanctions clock starts when the EPA makes a finding of nonimplementation in the **Federal Register** through notice-and-comment rulemaking.

c. Sanctions clock.[8] Once the sanctions clock has started upon the

[3] The CAAA also revised the Act's provisions concerning Federal implementation plans (FIP's). Under section 110(c)(1), the FIP requirement is triggered by an EPA finding that a State has failed to make a required submittal or that a received submittal does not satisfy the minimum completeness criteria established under section 110(k)(1)(A), or an EPA disapproval of a SIP submittal in whole or in part. However, since FIP's are not the subject of this notice, these provisions are not addressed here.

[4] A finding of substantial inadequacy under section 110(k)(5)—known as a "SIP call"—is made whenever EPA finds that a plan for any area is substantially inadequate to attain or maintain the relevant NAAQS.

[5] Section 179(a) refers to findings, disapprovals, and determinations. These will all be referred to by the one term "findings."

[6] 7–62, Finding of Failure to Submit a Required State Implementation Plan or Any Other Required Submission of the Act, Clean Air Act, Delegations Manual, 12/13/91.

[7] Under section 110(k)(1), the Act provides EPA with a 60-day period in which to determine whether a submittal is complete. The EPA makes this completeness determination by letter sent to the State (40 CFR part 51, appendix V). However, prior to determining whether something is complete, EPA must determine whether the State made a submittal or whether the State failed to submit the required SIP element or elements. Therefore, EPA must make such a determination prior to the time that EPA would be required to determine whether a submittal is complete. Since EPA has less than 60 days to determine whether a State failed to make a required submittal or submitted a complete SIP, and it is impossible to provide notice-and-comment in 60 days, EPA believes that Congress clearly intended that EPA should not go through notice-and-comment rulemaking prior to making findings of failure to submit.

In addition, even if EPA's findings of failure to submit were subject to rulemaking procedures under the APA, EPA believes that the good cause exception to the rulemaking requirement applies (APA section 553(b)(B)). Section 553(b)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the Agency for good cause determines that notice and comment are "impracticable, unnecessary, or contrary to the public interest." With regard to findings of failure to submit, notice and comment are unnecessary. The finding of failure to submit does not require any judgment on the part of the Agency. The issue is clear in that the Agency must state whether or not it has received any submittal from the State in response to a specific statutory requirement. No substantive review is required for such a determination. If the Agency has received a submittal, it will perform a completeness determination. If the Agency has not received anything, then the State has failed to submit the required plan or plan element under section 179(a)(1). Because there is nothing on which to comment, notice-and-comment rulemaking are unnecessary.

[8] For general guidance on EPA's interpretation of how the sanctions clock functions and what is

EPA making a finding under section 179(a), in order to stop the clock, the EPA must determine that the State has corrected the deficiency that prompted the finding. Similarly, to remove section 179(b) sanctions applied under section 179(a), the State must correct the deficiency prompting the finding that resulted in sanction(s) application.

For a section 179(a)(1) finding that a State has failed to submit a SIP or an element of a SIP, or that the SIP or SIP element submitted fails to meet the completeness criteria of section 110(k), the EPA will stop the sanctions clock or remove the sanction upon the EPA's determination that the State has submitted the missing plan or plan element and that the submittal meets the completeness criteria established pursuant to section 110(k)(1).[9] If the EPA disapproves a SIP submission based on its failure to meet one or more plan elements required by the Act, to correct the deficiency for purposes of stopping the sanctions clock or removing the sanction, the State must submit a revised SIP to the EPA and the EPA must approve that submittal pursuant to section 110(k). For a finding that a requirement of an approved plan is not being implemented, the EPA will stop the sanctions clock or remove the sanction through notice-and-comment rulemaking upon a determination that the State is implementing the approved plan or part of a plan.

The EPA has made section 179(a)(1) findings of failure to submit for numerous submittals due under the amended Act. In October 1991, the EPA made findings that nine States and the District of Columbia failed to submit certain corrections to volatile organic compounds (VOC's) regulations (due May 15, 1991) required under section 182(a)(2)(A) for certain ozone nonattainment areas (56 FR 54554, October 22, 1991). As of June 1993, the following District of Columbia ozone area[10] has still not submitted the complete regulation corrections required:

EPA region	Ozone nonattainment area
III	District of Columbia.

Thus, sanctions are due in this ozone area in April 1993 if the deficiency is not corrected with submittal of a plan the EPA finds complete. However, since the EPA interprets section 179(a) that sanctions shall not apply until the EPA makes the sanction selection via notice-and-comment rulemaking, sanctions shall apply in these areas when this sanction selection action is final and effective, or when any separate sanction selection action the EPA takes is final and effective. (Section III.A. discusses sanction implementation in greater detail.)

Note that with regard to the District of Columbia, temporary corrections to VOC's regulations have been adopted by the district and are both enforceable and effective. However, the District of Columbia must make these regulations permanent and formally submit them to the EPA as a SIP revision and the EPA must find them complete in order for the sanction clock to stop. (Section III.C. discusses in detail how the sanction clock stops under section 179(a).)

In December 1991, the EPA made findings that 11 States failed to submit a required PM–10 SIP submittal or failed to submit a required complete PM–10 SIP due November 15, 1991 for 27 moderate PM–10 nonattainment areas (57 FR 19906, May 8, 1992). In March 1992, the EPA made a finding that one State failed to submit a required complete PM–10 SIP due November 15, 1991 for one PM–10 area. In May 1992, the EPA made a finding that one State failed to submit a required complete PM–10 SIP due November 15, 1991 for two PM–10 areas. As of June 1993, the following 13 moderate PM–10 nonattainment areas[11] in seven States have still not submitted complete plans:

EPA region	PM–10 nonattainment area
I	New Haven, CT.
II	Guaynabo, PR.
III	Clairton, PA.
V	Lake County, IN.
IX	Douglas, AZ.
IX	Nogales, AZ.
IX	Phoenix, AZ (sanctions due September 1993).
IX	Rillito, AZ (sanctions due November 1993).
IX	Yuma, AZ (sanctions due November 1993).
IX	Imperial Valley, CA.
IX	Searles Valley, CA.
X	Bonner County, ID.
X	Pocatello, ID.

Thus, the first sanction is due in these PM–10 areas in mid-June 1993 (except in three areas, as noted in the table) if the deficiency is not corrected with submittal of a plan the EPA finds complete. However, as noted above, since the EPA interprets section 179(a) that sanctions shall not apply until the EPA makes the sanction selection via notice-and-comment rulemaking, sanctions shall apply in these areas when this sanction selection action is final and effective, or when any separate sanction selection action the EPA takes is final and effective.

In June 1992, the EPA made findings that three States failed to submit required SO_2 SIP submittals due May 15, 1992 for 3 SO_2 nonattainment areas (57 FR 48614, October 27, 1992). As of June 1993, the following three SO_2 areas[12] have still not submitted complete plans and thus the first sanction is due in December 1993 if the deficiency is not corrected with submittal of a plan the EPA finds complete:

EPA region	SO_2 nonattainment area
III	Warren County (Conewango Township), PA.
III	Hancock County (New Manchester Grant), WV.
VIII	Lewis and Clark County (East Helena), MT.

In addition, in January and February 1993 under sections 179(a)(1) and (3) and section 110(m) the EPA made findings that 36 States failed to submit SIP elements or submitted incomplete SIP elements due under the Act in June and November of 1992. The EPA is publishing a notice in the **Federal Register** announcing the findings made. The first sanction for these SIP elements is due July 1994.

3. Section 179(b) Sanctions[13]

Under section 179(b), two sanctions are available for selection by the EPA following a section 179(a) finding:

a. Highway funding sanction, section 179(b)(1) (42 U.S.C. 7509(b)(1)). "The

necessary to stop it, see the memorandum entitled "Processing of State Implementation Plan (SIP) Submittals" from John Calcagni to Air Division Directors, Regions I–X, July 9, 1992. A copy of this memorandum has been placed in the docket for this rulemaking.

[9] The July 9, 1992 SIP processing guidance indicates that if the 18 month sanction clock elapses during a completeness review sanctions will not be imposed unless EPA determines the plan incomplete. Note that in light of today's proposal this is still EPA guidance.

[10] For official nonattainment area boundaries, see 40 CFR part 81.

[11] For official nonattainment area boundaries, see 40 CFR part 81.

[12] For official nonattainment area boundaries, see 40 CFR part 81.

[13] In addition, section 179(a) provides for an air pollution grant sanction that applies to grants EPA may award under section 105. However, since it is not a sanction provided under section 179(b), it is not one of the sanctions that automatically apply under section 179(a).

Administrator may impose a prohibition, applicable to a nonattainment area, on the approval by the Secretary of Transportation of any projects or the awarding by the Secretary of any grants, under title 23, United States Code, other than projects or grants for safety * * *." The safety determination will be made by the Secretary "based on accident or other appropriate data submitted by the State." The Secretary must determine that "the principal purpose of the project is an improvement in safety to resolve a demonstrated safety problem and likely will result in a significant reduction in, or avoidance of, accidents." Beyond projects and grants qualifying for the safety exemption, the prohibition also will not apply to the following:

(1) Capital programs for public transit;

(2) Construction or restriction of certain roads or lanes solely for the use of passenger buses or high occupancy vehicles;

(3) Planning for requirements for employers to reduce employee work-trip-related vehicle emissions;

(4) Highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a net emission reduction;

(5) Fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations;

(6) Programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs;

(7) Programs for breakdown and accident scene management, nonrecurring congestion, and vehicle information systems, to reduce congestion and emissions; and

(8) Such other transportation-related programs as the Administrator, in consultation with the Secretary of Transportation, finds would improve air quality and would not encourage single occupancy vehicle capacity.

In considering such measures, the State should seek to ensure adequate access to downtown, other commercial and residential areas, and avoid increasing or relocating emissions and congestion rather than reducing them.

b. Offset sanction, section 179(b)(2) (42 U.S.C. 7509(b)(2)). The offset sanction requires that when States apply the emissions offset requirements of section 173 to new or modified sources or emissions units for which a permit is required under part D, the ratio of emission reductions to increased emissions must be at least 2 to 1.

4. Application and Timing of the Section 179(b) Sanctions

Although application of section 179(b) sanctions is mandatory when the EPA makes a finding under section 179(a), it is not immediate. Instead, section 179(a) provides for a sanction "clock", allowing States 18 months from the finding to correct the deficiency that prompted the finding before sanctions must apply. Specifically, under section 179(a), 18 months after the Administrator makes a finding concerning a State failure (as described above) with respect to a specific plan or plan element required by part D, or in response to a SIP call, the highway or offset sanction of section 179(b) shall apply (as selected by the Administrator) unless the deficiency has been corrected. In addition, if the deficiency has not been corrected six months after the first sanction applies, then the second sanction shall apply. However, both sanctions shall apply after 18 months if the Administrator finds a lack of good faith on the part of the State.[14]

II. Today's Action

A. Proposal

By this document, the EPA is proposing a rule governing the order in which the sanctions shall apply under section 179 following a section 179(a) finding. This proposal is limited to the order of sanctions since, once a finding has been made, the EPA's discretion is limited to which sanction shall apply and not whether sanctions should apply.

By this document, the EPA is setting forth, as a general matter, the following order of application of sanctions. The EPA is proposing that the section 179(b)(2) offset sanction apply in an area 18 months from the date when the EPA makes a finding under section 179(a) with regard to that area. Furthermore, the EPA is proposing that the section 179(b)(1) highway sanction apply in an area six months following application of the offset sanction. The EPA is proposing to sequence the application of the section 179(b) sanctions in this manner in all cases unless the EPA decides highways sanctions apply first by individual notice-and-comment rulemaking. (Sanction application sequencing is addressed in § 52.31(d) of the proposed rule.)

[14] Any finding of a lack of good faith EPA makes under section 179(a) will be subject to notice-and-comment rulemaking.

The proposal is limited to the sequence in which sanctions shall apply under section 179(a) with respect to a finding made under subsections (1)–(4) specific to any implementation plan or plan revision required under part D and any implementation plan or revision required under part D found substantially inadequate pursuant to section 110(k)(5). In general, part D plans and plan revisions are required for areas designated nonattainment under section 107.[15] The proposal does not encompass finding the EPA can make under section 179(a) regarding SIP calls for non-part D plans or plan revisions or the sanction provisions in section 110(m) of the Act.[16] It also does not encompass any findings the EPA may make under other titles of the Act (e.g., section 502(d) for operating permitting programs). [Section 52.31(c) of the proposal addresses the rule's applicability, including the findings and SIP's affected.]

B. Sanction Sequencing Proposal

1. Background

In general, sanctions can serve at least two functions. One function is to encourage compliance with the Act's requirements. This is an important tool the EPA has available to compel areas to meet their obligations under the Act with the goal of ensuring the timely development of approvable SIP's and the implementation of those plans when approved by the EPA. A second function of sanctions is to protect and preserve air quality in areas until the deficiency prompting the sanctions-

[15] While part D generally applies to nonattainment areas, some requirements extend to other areas. For example, section 184(a) specifically created at enactment an ozone transport region called the Northeast Ozone Transport Region (NOTR), which is comprised of several mid-Atlantic and New England States (see General Preamble at page 13527). Though areas within some of these States may not be designated nonattainment, the States must submit revisions to their SIP's by certain statutory deadlines to include specific part D measures for these areas (e.g., enhanced vehicle inspection and maintenance program, reasonably available control technology on volatile organic compounds (VOC) sources, etc.).

[16] Section 110(m) of the Act grants EPA broad discretionary authority to apply either sanction listed in section 179(b) "at any time (or at any time after) a finding" under section 179(a) with respect to any portion of the State, subject to certain limitations (57 FR 44534, September 28, 1992). The selection of sanctions being made by this action, however, does not apply to the imposition of sanctions by EPA under section 110(m). Thus, the section 110(m) provisions are not addressed here. Note that sanction selection for section 110(m) findings (including the findings under section 110(m) EPA made in January/February 1993 for State failure to submit a section 507 small business assistance program) will be made through notice-and-comment rulemaking independent from this action.

initiating finding can be corrected. This function is consistent with and reinforces the overall purpose of the Act: to protect air quality so as to promote public health and welfare. See H.R. 490, 101st Cong. 2nd Sess. 228 (1990).

2. Rationale for Sanction Order

In the General Preamble at page 13567, the EPA expresses the preliminary view that the choice of which sanction to apply under section 179 will be decided on a case-by-case basis. However, today, for three reasons, the EPA is proposing that, as a general matter, the offset sanction apply at 18 months followed by the highway sanction 6 months thereafter.

One, the EPA believes that conceptually the offset sanction will, in general, provide a more certain air quality benefit in the shorter- and longer-term than the highway sanction. The offset sanction provides a more certain air quality benefit because it increases from between 1-to-1 and 1.5-to-1 [17] to 2-to-1 the ratio of emission reductions to increased emissions a new or modified source must obtain before being able to obtain a permit to construct and operate in a nonattainment area. Thus, when the offset sanction applies and new or modified major sources locate and commence operation in an area, air quality can directly benefit as emissions contributing to the problem are reduced by an amount up to twice that required "merely" to offset the new source's emissions.

On the other hand, the link between a benefit to air quality and the highway sanction can be less direct and thus more uncertain. Estimates of the air quality impact of transportation projects not implemented are for the most part less certain than estimates of the air quality impact of an emission reduction from a stationary source obtained in connection with the offset sanction. An estimate of the air quality benefit of a transportation project not implemented depends on the assumptions made about the various factors governing the extent and spatial character of the emissions-generating activity (e.g., vehicles miles traveled, traffic patterns, etc.). These assumptions reflect uncertainty. By contrast, activity factor assumptions for stationary sources are more certain and, with the predictive tools available (i.e., air quality models), the beneficial impact to air quality of the offset sanction's emission reductions can be relatively easily quantified.

Moreover, the uncertainty concerning the link between an air quality benefit and the highway sanction increases in the longer-term because estimating the potential air quality benefit achievable by the highway sanction from not implementing a highway project is more uncertain the further into the future the underlying activity factor assumptions are projected. In the nearer-term some benefit to air quality may result from the highway sanction by a cessation of project construction activity, producing a reduction in whatever construction-related emissions may have occurred. However, the benefit would be temporary whereas emission reductions resulting from implementation of the offset sanction must be achieved when the source commences construction and remain in place thereafter. Thus, the offset sanction in general provides a more certain air quality benefit than the highway sanction in the shorter- and longer-term.

Two, the offset sanction provides greater potential for more significant air quality protection because it potentially affects all categories of stationary sources and, depending on the pollutant(s) addressed in the deficiency prompting the finding, may affect all criteria pollutants (i.e., pollutants for which the EPA has promulgated a NAAQS such as CO, PM–10, etc.). By contrast, the highway sanction would affect only mobile sources and pollutants emitted by mobile sources. (Mobile sources are not, for instance, regarded as significant emitters of lead and SO_2.)

Three, in addition to air quality considerations, the 2-to-1 offset sanction is less complicated to implement and administer than the highway sanction by its very nature and because of the manner in which the EPA intends to implement it, as discussed in section II.C.1.b. below. Since the EPA will administer the offset sanction, its implementation will not require coordination and communication between the EPA and other Federal agencies and the EPA and non-air quality agencies. In addition, as discussed below, implementation of the offset sanction does not necessitate a revision to State nonattainment NSR rules and the EPA's role will consist primarily of enforcing the 2-to-1 offset requirement through section 113(a)(5).

Implementation of the highway sanction, on the other hand, will require extensive coordination between the EPA, the Department of Transportation (DOT), and State transportation and planning agencies. The administration of the highway sanction is also more burdensome because it will necessitate a continuous case-by-case review of projects (based on information submitted by the States) to determine which projects are exempt from the highway funding restrictions of the sanction and which projects are not.

Moreover, the EPA does not regard sanctions as a long-term solution to air quality problems but rather intends to work with States to resolve deficiencies as rapidly as possible. Thus, by applying the offset sanction at 18 months, if the State corrects the deficiency prompting the finding prior to six months thereafter, then the highway sanction would not apply and the EPA and other affected agencies would not be burdened with its comparatively greater implementation and administration burden.

The EPA, therefore, is proposing, as a general matter, that the offset sanction apply before the highway funding sanction following a section 179(a) finding. The EPA recognizes, however, that in specific cases the particular circumstances may lead the EPA to conclude that it is more appropriate for the highway sanction to apply first. (See section II.D. for discussion of how private persons may petition the EPA for issuance of a rule under the Administrative Procedures Act (APA) such as one proposing the highway sanction apply first.)

In some situations, it might be more appropriate for the highway sanction to apply first where the EPA determines that the highway sanction could provide more short-term air quality benefit and that the highway sanction could have a greater influence in encouraging compliance. For example, in areas that are not experiencing growth in the number of new stationary sources, the highway sanction may provide more short-term air quality benefits since the effect of an increase in the offset ratio would be very low. As another example, because of the economic impact, in some areas restricting highway funding may provide more encouragement to State and/or local officials to correct a deficiency than would an increase in the offset ratio. In any such case, the EPA will take individual notice-and-comment rulemaking action, proposing the highway sanction apply first.

C. Sanction Effectuation

1. Offset Sanction

The following discussion concerns how the offset sanction will apply. First, the scope of offset sanction applicability is addressed and, second, implementation and enforcement of the

[17] The new source review (NSR) offset ratio for nonattainment areas generally is at least 1 to 1. However, the offset ratio for NSR in ozone nonattainment areas ranges from 1.1 to 1.5, depending on the area's classification.

sanction is discussed. (Section 52.31(e) of the proposal addresses offset sanction applicability and implementation.)

a. Scope.

(1) Source applicability.

The EPA is proposing that the increased emission offset ratio of at least 2-to-1 apply to sources whose permits have not been issued by the date on which the offset sanction applies (in this proposal, 18 months from the date of a section 179(a) finding).

(2) Pollutant applicability.

When applying in an affected area, the offset sanction will require that new or modified sources or emission units, for which a permit to construct and operate is required under part D, obtain emission offsets at a ratio of at least 2-to-1. The language of section 179(b)(2) generally references the offset requirements of section 173 for new or modified sources or emission units required to obtain a permit under part D and is silent with respect to the pollutant or pollutants for which the source would be subject to this requirement.

In today's action, the EPA is proposing that, when the section 179(b)(2) offset sanction applies pursuant to section 179, it applies only to the pollutant(s) (and its/their precursors) addressed in the deficiency prompting the finding. Sources wishing to construct or modify in an area must then comply with the offset sanction for the pollutant(s) (and its/their precursors) addressed in the deficiency prompting the finding and for which the source is also subject to nonattainment NSR.[18] However, the EPA is also proposing that if the deficiency prompting the finding is general in nature and not specific to any pollutant(s) (or its/their precursors), the offset sanction applies to the criteria pollutant(s) (and its/their precursors) for which the area is designated nonattainment.[19] Sources wishing to construct or modify in an area must then comply with the offset sanction for all the criteria pollutant(s) (and its/their precursors) for which the source is also subject to nonattainment NSR.

When a source must comply with the offset sanction for a pollutant(s), in the determination of whether the source is subject to nonattainment NSR requirements for the pollutant(s), precursors should be treated in the same manner as nonattainment NSR applicability determinations generally. For PM–10 precursors, guidance is provided in the General Preamble at 57 FR 13538 and 13541–13543. The discussion in the General Preamble addresses the section 189(e) requirement that, for all PM–10 nonattainment areas, the control requirements applicable under PM–10 SIP's are also applicable to major stationary sources of PM–10 precursors, except where the EPA determines that such sources do not contribute significantly to PM–10 nonattainment in the area. The General Preamble discussion provides guidance on how and when the EPA intends to make significance determinations for PM–10 precursors for particular areas, which affects whether or not precursors must be addressed in nonattainment area NSR SIP revisions. The PM–10 precursors discussion on at 57 FR 15338 also provides guidance on how precursors should be treated for applicability purposes.

For precursors to ozone, a supplement to the General Preamble published on November 25, 1992 (57 FR 55620) provides guidance on amended SIP requirements for NO_x. Page 55624 specifically addresses the treatment of precursors to ozone in nonattainment NSR applicability determinations.

In addition, at 57 FR 55623 and 55626–55628 of the General Preamble provide guidance on section 182(f), which provides States an opportunity to demonstrate to the EPA that some or all of the amended Act's requirements should not apply to NO_x, including nonattainment NSR. Thus, for NO_x sources in ozone nonattainment areas where the NO_x nonattainment NSR requirements of section 182(f) do not apply, the sanction does not apply to NO_x (as an ozone precursor).

b. Sanction implementation and enforcement. When the offset sanction applies, the EPA intends to ensure the sanction is being implemented as permits are reviewed by reviewing authorities for completeness and approvability. As necessary, the EPA intends to enforce the 2-to-1 offset sanction through section 113(a)(5) which gives the EPA the authority to take certain actions whenever, on the basis of any available information, the EPA finds that a State is not acting in compliance with any requirement or prohibition of the Act concerning construction of new sources or modification of existing ones. Under section 113(a)(5) those actions are: (1) Issue an order prohibiting the construction or modification of any major stationary source in any area where such requirement applies; (2) issue an administrative penalty order in accordance with section 113(d); or (3) bring a civil action under section 113(b).

When the offset sanction applies pursuant to this rule, if a State lacks a nonattainment NSR program that the EPA has approved under section 110(k)(3) as meeting the amended Act NSR requirements, then the State must comply directly with the substantive new nonattainment NSR applicability and emission offset requirements of sections 171–193 (42 U.S.C. 7501–7515) of the amended Act for emission offsets (or cease under section 173 to issue permits for major new or modified sources). Where the EPA has not approved a NSR SIP revision as meeting the requirements of amended sections 171–193, the specifications of those provisions must supersede any less stringent or inconsistent State NSR requirements.

In addition, when the offset sanction applies pursuant to this rule, in cases in which States miss the statutory deadline for part D NSR SIP submittals, offsets should be applied consistent with EPA's NSR transitional guidance.[20] The guidance addresses how applications from sources should be treated when the State misses the statutory deadline for a part D NSR SIP submittal and a source has not submitted a complete application by the NSR SIP due date. The guidance states that EPA will consider these sources in compliance with the Act where the source obtains from the State a permit that is consistent with the substantive new NSR part D provisions in the amended Act. If such a source proposes to locate or modify in an area subject to the offset sanction,

[18] However, if a finding addresses one of the two ozone precursors (VOC's and nitrogen oxides (NO_x)), but does not address both precursors (for example, if EPA finds a State failed to submit a VOC rule correction for an ozone nonattainment area), then when the offset sanction applies sources must address both ozone precursors, even if the other precursor is not addressed in the deficiency prompting the finding (i.e., NO_x). This is because ozone is formed by both precursors acting in combination, not singly. Thus, addressing one ozone precursor without addressing the other might diminish the air quality benefit of the offset sanction by not reducing ozone levels. However, if EPA approves a demonstration under section 182(f) that some or all of the Act's new NO_x requirements should not apply, then, in this example, the sanction applies to NO_x (as an ozone precursor) only at sources where NO_x NSR for ozone purposes is applicable. (See discussion below in this section.)

[19] For areas subject to part D requirements but which are not designated nonattainment (e.g., transport regions, such as the NOTR), where the finding is general in nature the offset sanction applies to the pollutant(s) (and its/their precursors) identified as causing the air pollutant transport problem.

[20] See "New Source Review (NSR) Programs Transitional Guidance" memorandum from John S. Seitz to Air Division Director, Regions I–X, March 11, 1991; and "New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements" memorandum from John Seitz to Air Division Director, Regions I–X, September 3, 1992. These have been entered in the docket for this rulemaking.

then it must comply with the emission offset requirements established in sections 171–193 and the requirements set forth in this regulation. In other words, if a source proposes to locate or modify in an area subject to the offset sanction, mere consistency with the substantive new offset requirements of the Act is insufficient. Once today's proposed rule is made final, sources subject to the sanction must comply with the requirements of 40 CFR 52.31(a)–(e) and the substantive NSR requirements of sections 171–193 as applicable.

As indicated in the September 3, 1992 NSR transitional guidance, the relevant substantive new provisions are the new applicability thresholds, the offset requirements of section 173, and the NO_x requirements of section 182(f) for most ozone nonattainment areas and the NOTR. (The new NSR offset requirements are discussed in the General Preamble at 57 FR 13552–13554.) Although not specifically mentioned in the transitional guidance, the substantive requirements include the section 189(e) PM–10 precursors requirement addressed in the General Preamble at 57 FR 13538 and 13541–13543.

2. Highway Sanction

Under the highway sanction, as described in section I.D.2. above, the EPA imposes a prohibition on approval by the Secretary of DOT of highway projects and grants. Thus, the highway sanction is not directly implemented by the EPA. However, the EPA is in the process of developing procedures with DOT to provide for the coordinated implementation of the highway sanction. (Section 52.31(e) of the proposal addresses the highway sanction.)

D. Opportunity for Comment

As discussed above, under section 179(a), the Act requires sanctions apply within the timeframes prescribed. The only discretion afforded the EPA is which of the two section 179(b) sanctions apply at 18 months and which six months thereafter. Therefore, today the EPA is seeking comment only on its proposal that, as a general matter, the offset sanction apply at 18 months and the highway sanction apply six months thereafter following section 179(a) findings the EPA has made or will make for a required part D plan or plan revision or a call for a part D plan or plan revision. If in the future the EPA makes exceptions to this rule, then in individual notice-and-comment rulemakings the EPA will seek comment on whether the highway sanction shall apply after 18 months and the offset sanction apply six months thereafter given the circumstances at hand.

Note that the APA also provides citizens with a means that could be used to petition the EPA to propose the highway sanction apply first. The APA, 5 U.S.C. 553(e), provides that "Each agency [including the EPA] shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." This provision could conceivably be invoked by a citizen to petition the EPA to propose the highway sanction apply first with respect to a section 179(a) finding covered by this action.

III. Miscellaneous

A. Executive Order 12291

Under Executive Order 12291, the EPA must decide whether a rule is "major" and, therefore, subject to the requirements of a regulatory impact analysis (RIA). The EPA does not consider this to be a "major" rulemaking and, therefore, an RIA has not been prepared. In making this determination, the EPA considered the limited discretion afforded by the sanction provisions of section 179 and the general nature of the proposed rule.

The section 179 provisions do not afford the EPA the discretion, following a section 179(a) finding, to decide whether or not a section 179(b) sanction applies. Sanction application under section 179 is automatic under the timeframes prescribed once the EPA selects the sanction order; the EPA's only discretion concerns the ordering of sanctions as discussed above. Thus, the only relevant potential impact is the effect of applying, as a general matter, the offset sanction six months before the highway sanction. The EPA, however, does not believe this will have a major impact given the short period of time the offset sanction will apply before the highway sanction applies.

Moreover, the EPA also believes, as noted above, that, in the event imposing the highway sanction is not necessary six months following the offset sanction, because the State has corrected the deficiency prompting the finding, applying the offset sanction first eliminates the need for the EPA and other agencies to bear the greater administrative and implementation burden—compared to the offset sanction—of having to effectuate the highway sanction.

In sum, although impacts will result in the future when the sanctions apply following the EPA selection, the mandatory nature of section 179 does not afford the EPA the discretion to alter those impacts in a meaningful and significant way since the EPA can only decide the order of sanction application following section 179(a) findings. In addition, the impacts from sanctions are impossible to gauge since the universe of areas which will, in fact, fail to meet the requirements of the Act is not known. It is also not known, for those areas where sanctions apply, for what period of time the sanctions will be in place, which depends on how rapidly the State corrects the deficiency in question. The EPA does intend, though, to work with States to expeditiously correct any deficiencies prompting section 179(a) findings and use sanctions as a short-term measure.

Therefore, for all these reasons the Administrator finds this proposed rule will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written OMB comments and the EPA responses are in the docket for this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 600 *et seq.*) requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. Agencies are required to perform a Regulatory Flexibility Analysis where the significant impacts are possible on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with populations of less than 50,000.

Because this action will have some impact, an Initial RFA Analysis has been prepared pursuant to the EPA guidelines, which has been placed in the docket to this rulemaking. For the following three reasons, the EPA believes the impact of this rule will be limited. One, any impact that may occur is limited to sources defined as "major" for nonattainment NSR purposes (generally 100 tons per year (TPY) or more of a criteria pollutant, except in the more serious ozone nonattainment areas). The major sources most likely to also be small entities as defined pursuant to the RFA are only in these more serious ozone areas where the major source TPY threshold has been

lowered under part D of the Act. Two, note that the amended Act also increases the nonattainment NSR offset ratio in the ozone nonattainment areas. The ratio ranges from 1.1 to 1.5, depending on the severity of the area's classification. Thus, any impact the 2-to-1 offset sanction will have may not be as significant in precisely those areas—severe and extreme ozone nonattainment areas—where small entities that are also major sources are most likely to exist. Three, as stated above, the only relevant impact period is 6 months in duration.

C. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

When the offset sanction applies, sources subject to it will not incur an additional information collection burden because sources are already required under the section 173 offset requirements to obtain an emission offset from between 1-to-1 and 1.5-to-1. When the offset sanction applies, it should not impose an additional information collection burden because sources will not have to provide any information in the application beyond that which it would already have to provide in the absence of the sanction. (For the information collection burden of new requirements of the amended Act for nonattainment NSR and prevention of significant deterioration, an information collection request is being prepared to support rulemaking changes to parts 51 and 52.)

When the highway sanction applies, the Secretary of DOT is required to determine which projects or grants should not be affected by the sanction and which, therefore, are exempt. This determination will be based on information readily available in existing documentation gathered for the purpose of evaluating the environmental, social, and economic impacts of different alternatives for transportation projects. These analyses are required for the preparation of environmental assessments and impact statements under the National Environmental Policy Act (NEPA). Historically, exemption determinations by DOT for sanctions have been based on such NEPA documentation and not necessitated additional information gathering and analysis by the States. In addition, since under NEPA final environmental documents must be approved by DOT, in most cases the NEPA documentation will already be in DOT's possession. Therefore, the EPA does not believe that the highway sanction, when applied, will impose an additional information collection burden on the States.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 23, 1993.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble part 52 of title 40, Code of Federal Regulations, is proposed to be amended as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

2. Subpart A is proposed to be amended by adding a new § 52.31 to read as follows:

§ 52.31 Application sequence for Clean Air Act section 179 sanctions.

(a) *Purpose.* The purpose of this section is to implement 42 U.S.C. 7509(a) of the Act, with respect to the application sequencing of the automatic sanctions under 42 U.S.C. 7509(b), following a finding made by the Administrator pursuant to 42 U.S.C. 7509(a).

(b) *Definitions.* All terms used in this section, but not specifically defined herein, shall have the meaning given them in § 52.01.

(1) *1990 Amendments* means the 1990 Amendments to the Clean Air Act (42 U.S.C. 7401 *et seq.*).

(2) *Act* means Clean Air Act, as amended in 1990 (Pub Law No. 101–549, 104 Stat. 2399).

(3) *Criteria pollutant* means pollutant for which the Administrator has promulgated a national ambient air quality standard pursuant to 42 U.S.C. 7409 (e.g., ozone, lead, sulfur dioxide, particulate matter, carbon monoxide, nitrogen dioxide).

(4) *Findings* or *Finding* refer(s) to one or more of the findings, disapprovals, and determinations described in § 52.32.

(5) *Part D* means part D of title I of the Act.

(6) *Part D SIP or SIP revision* or *Plan* means a State implementation plan or plan revision that States are required to submit or revise pursuant to part D.

(c) *Applicability.* This section shall apply to any State in which an air quality area is located for which the Administrator has made one of the following findings, with respect to any part D SIP or SIP revision required under the Act, or any part D SIP or SIP revision required in response to a finding of substantial inadequacy under 42 U.S.C. 7410(k)(5):

(1) A finding that a State has failed, for an area designated nonattainment under 42 U.S.C. 7407(d), to submit a plan, or to submit one or more of the elements (as determined by the Administrator) required by the provisions of the Act applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under 42 U.S.C. 7410(k);

(2) A disapproval of a submission under 42 U.S.C. 7410(k), for an area designated nonattainment under 42 U.S.C. 7407(d), based on the submission's failure to meet one or more of the elements required by the provisions of the Act applicable to such an area;

(3)(i) A determination that a State has failed to make any submission required under the Act, other than one described under paragraph (c)(1) or (c)(2) of this section, including an adequate maintenance plan, or has failed to make any submission, required under the Act, other than one described under paragraph (c)(1) or (c)(2) of this section, that satisfies the minimum criteria established in relation to such submission under 42 U.S.C. 7410(k)(1)(A); or (ii) A disapproval in whole or in part of a submission described under paragraph (c)(3)(i) of this section; or

(4) A finding that any requirement of an approved plan (or approved part of a plan) is not being implemented.

(d) *Sanction application sequencing.*

(1) To implement 42 U.S.C. 7509(a), the offset sanction under paragraph (e)(1) of this section shall apply in an area 18 months from the date when the Administrator makes a finding under paragraph (c) of this section unless the deficiency forming the basis of the finding has been corrected. To further implement 42 U.S.C. 7509(a), the highway sanction under paragraph (e)(2) of this section shall apply in an area six months from the date the offset sanction under paragraph (e)(1) of this section applies unless the deficiency has been corrected.

(2) Notwithstanding paragraph (d)(1) of this section, nothing in this section will prohibit the EPA from determining through notice-and-comment

rulemaking that in specific circumstances the highway sanction should apply 18 months after the EPA makes one of the findings under paragraph (c) of this section and that the offset sanction should apply six months from the date the highway sanction applies.

(e) *Available sanctions and method for implementation.*

(1) *Offset sanction.* (i) As further set forth in paragraphs (e)(1)(ii)–(e)(1)(v) of this section, for the following areas, on the following dates, the State shall apply the emissions offset requirements, in accordance with 42 U.S.C. 7503 and 7509(b)(2), at a ratio of at least 2-to-1 for emission reductions to increased emissions of the following pollutant(s) and its (their) precursors for which the finding(s) under paragraph (c) of this section is (are) made:

Affected area	Date sanction applies	Pollutant(s) affected

(ii) The emissions offset requirements shall apply to new or modified sources or emissions units for which a permit is required under part D, 42 U.S.C. 7501–7515, on or after the date the sanction applies.

(iii) For purposes of applying the emissions offset requirement set forth in 42 U.S.C. 7503, at the 2-to-1 ratio required under paragraph (e)(1)(i) of this section, the State shall comply with the provisions of a State-adopted new source review program that the EPA has approved under 42 U.S.C. 7410(k)(3) as meeting the nonattainment area new source review requirements of 42 U.S.C. 7501–7515, as amended by the 1990 Amendments, or, if no such plan has been approved, the State shall comply directly with the nonattainment area new source review requirements specified in 42 U.S.C. 7501–7515, as amended by the 1990 Amendments, or cease issuing permits to construct and operate major new or modified sources. For purposes of applying the offset requirement under 42 U.S.C. 7503 where the EPA has not fully approved a State's new source review program as meeting the requirements of part D, the specifications of those provisions shall supersede any State requirement that is less stringent or inconsistent.

(iv) For purposes of applying the emission offset requirement of 42 U.S.C. 7503, the enhanced 2-to-1 ratio required under paragraph (e)(1)(i), of this section shall be limited to the pollutant(s) and its (their) precursors which is (are) of concern in the deficiency prompting the finding made under paragraph (c) of this section. If the deficiency prompting the finding under paragraph (c) of this section is not specific to a particular pollutant(s) and its (their) precursors, the 2-to-1 ratio required under paragraph (e)(1)(i) of this section shall apply to all pollutants (and their precursors) for which an area within the State listed in paragraph (e)(1)(i) of this section is designated as nonattainment.

(v) For purposes of applying the emissions offset requirement set forth in 42 U.S.C. 7503, any permit required pursuant to 42 U.S.C. 7503 issued on or after the date the offset sanction applies under paragraph (d) of this section shall be subject to the enhanced 2-to-1 ratio under paragraph (e)(1)(i) of this section.

(2) *Highway funding sanction.* For the following areas, on the following dates, the highway sanction shall apply as provided in 42 U.S.C. 7509(b)(1):

Affected area	Date sanction applies

[FR Doc. 93–24185 Filed 9–30–93; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[IL12–11–5172; FRL–4733–2]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 29, 1990, EPA promulgated Federal stationary source volatile organic compound (VOC) control measures representing reasonably available control technology (RACT) for emission sources located in six northeastern Illinois (Chicago area) counties. EPA also took final rulemaking action on certain VOC RACT rules previously adopted and submitted by the State of Illinois for inclusion in its State Implementation Plan (SIP). Included in EPA's rules was a requirement that the miscellaneous organic chemical manufacturing processes at the Stepan Company Millsdale Plant (Stepan) manufacturing facility in Elwood, Illinois be subject to the "generic" rule for miscellaneous organic chemical manufacturing processes. By letter of October 22, 1990, Stepan requested that EPA reconsider its rule as applicable to Stepan, on the basis that EPA had not adequately responded to certain comments. EPA agreed to do so, and is proposing site-specific RACT requirements for Stepan's miscellaneous organic chemical manufacturing processes and volatile organic liquid (VOL) storage tanks, which are sources of VOC. EPA solicits public comments on its proposed rulemaking action.

DATES: Comments on this proposal must be received by November 1, 1993 at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzer by November 1, 1993 at the address below. Interested persons may call Ms. Hattie Geisler at (312) 886–3199 to see if a hearing will be held and the date and location of the hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

ADDRESSES: Written comments on this proposed action should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (5AR–26), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604. Again, comments should be strictly limited to the subject matter of this proposal.

Docket: Pursuant to sections 307(d)(1)(B) and (N) of the Clean Air Act (CAA), 42 U.S.C. 7607(d)(1)(B) and (N), this action is subject to the procedural requirements of section 307(d). Therefore, EPA has established a public docket for this action, A–92–36, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Jacqueline Brown before visiting the Washington, DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Street, Chicago, Illinois 60604, (312) 886–6036.

U.S. Environmental Protection Agency, Docket No. A–92–36, Air Docket (LE–131), room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Steve Rosenthal, Regulation Development Branch, U.S. Environmental Protection Agency, Region 5, (312) 886–6052, at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION:

I. Background

In an effort to comply with certain requirements under part D of the CAA,