# Sunshine Act Meetings

Federal Register
Vol. 59, No. 149
Thursday, August 4, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:30 a.m., Friday, August 12, 1994.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–19182 Filed 8–2–94; 2:55 pm]

BILLING CODE 6351–01–M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, August 2, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's corporate and supervisory activities.

Recommendations regarding administrative enforcement proceedings.

Application of Webster City Federal Savings Bank, Webster City, Iowa, a proposed new federally chartered stock savings bank, for Federal deposit insurance.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: August 2, 1994.

Federal Deposit Insurance Corporation.

**Leneta G. Gregorie,**

*Acting Assistant Executive Secretary.*

[FR Doc. 94–19196 Filed 8–2–94; 3:30 pm]

BILLING CODE 6714–01–M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, August 9, 1994, to consider the following matters:

*Summary Agenda*

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum re: Second Quarter 1994 Financial Management Report.

*Discussion Agenda*

Memorandum re: Guidelines within which the Division of Supervision will exercise the authority delegated to it as set forth in section 362.6 of the Corporation's rules and regulations with respect to applications by insured state banks involving retention of various types of life insurance products.

Memorandum with respect to a revised process for handling appeals of the supervisory subgroup component of the risk-based premium calculation.

Memorandum and resolution re: Proposed amendments to Part 337 of the Corporation's rules and regulations, entitled "Unsafe and Unsound Banking Practices," which would except loans which are fully secured by certain types of collateral from the general limit on "other purpose" loans to executive officers of insured nonmember banks.

Memorandum and resolution re: Final amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation," which revise application and publication requirements for the establishment and relocation of remove service facilities.

Memorandum and resolution re: Final amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which implement the portions of Section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 that require the Federal banking agencies to revise their risk-based capital standards for insured depository institutions to ensure that those standards take adequate account of concentration of credit risk and the risks of nontraditional activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 2, 1994.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Acting Executive Secretary.*

[FR Doc. 94–19197 Filed 8–2–94; 3:30 pm]

BILLING CODE 6714–01–M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, August 9, 1994, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

*Summary Agenda*

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof;

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

**Note:** Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

*Discussion Agenda*

Matters relating to the Corporation's corporate, supervisory, and resolution activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW, Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 2, 1994.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Acting Executive Secretary.*

[FR Doc. 94–19198 Filed 8–2–94; 2:30 pm]

BILLING CODE 6714–01–M

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**FEDERAL ELECTION COMMISSION**

**"FEDERAL REGISTER" NUMBER:** 94–18570.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, August 4, 1994, 10:00 a.m., Meeting Open to the Public.

The following item was deleted from the agenda:

Advisory Opinion 1994–17: Katherine S. Freichtner Ruffolo on behalf of Peter Barca for U.S. Congress.

The following item was added to the agenda:

Future Meeting Dates.

**DATE AND TIME:** Tuesday, August 9, 1994 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This Meeting Will Be Closed to the Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, August 11, 1994 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (Ninth Floor).

**STATUS:** This Meeting Will Be Open to the Public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.
Regulations:

Personal Use of Campaign Funds; Draft Request for Additional Comments (11 CFR Part 113).

Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Ron Harris, Press Officer, Telephone: (202) 219–4155.

**Marjorie Emmons,**

*Secretary of the Commission.*

[FR Doc. 94–19181 Filed 8–2–94; 2:56 pm]

BILLING CODE 6715–01–M

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**UNITED STATES INTERNATIONAL TRADE COMMISSION**

[USITC SE–94–27]

**TIME AND DATES:** August 10, 1994 at 2:30 p.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436.

**STATUS:** Open to the public.

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–363–364 (Preliminary) (Oil Country Tubular Goods from Austria and Italy), and Inv. Nos. 731–TA–711–717 (Preliminary) (Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain).—briefing and vote.
5. Inv. No. 731–TA–718 (Preliminary) (Glycine from China).—briefing and vote.
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: August 2, 1994.

**Donna R. Koehnke, Secretary**

[FR Doc. 94–19213 Filed 8–2–94; 3:58 pm]

BILLING CODE 7020–02–P

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**LEGAL SERVICES CORPORATION**

Audit and Appropriations Committee Meeting; Changes

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 58 FR 38234.

**PREVIOUSLY ANNOUNCED TIME AND DATE:** A meeting of the Legal Services Corporation Board of Directors Audit and Appropriations Committee will be held on August 5–6, 1994. The meeting will commence at 1:00 p.m. on August 5th, and 9:00 a.m. on August 6, 1994.

**PREVIOUSLY ANNOUNCED LOCATION OF MEETING:** The Fairmont Hotel, 123 Baronne, The Bayou III Room, New Orleans, LA 70140, (504) 529–7111.

**CHANGES IN THE MEETING:**

**TIME:** The meeting will commence at 2:00 p.m. on August 5th, and at 10:30 a.m. on August 6, 1994.

**MATTERS TO BE CONSIDERED:** The item pertaining to the revenue audit conducted by the Inspector General, numbered 7 on the original agenda, has been deleted. A new item number 7 is reflected on the following amended agenda.

**OPEN SESSION:**

1. Approval of Agenda
2. Approval of Minutes of July 15, 1994 Meeting
   a. Open Session
   b. Closed Session
3. Presentation of June 30, 1994 Expenses with Administrative Expenses Allocated to each Cost Center
4. Consideration and Review of Expense Projections for the period of July 1, 1994 through September 30, 1994
   a. Consideration of Recommended COB Modifications
   b. Consideration of Recommended COB Internal Budgetary Adjustments
5. Discussion of the Management and Administration Budget for Fiscal Year 1995.
6. Consideration of and Possible Action on the Fiscal Year 1996 Budget Mark.
7. Ratification of Independent Audit Firm's Contract for Conduct of the Corporation's Financial Audit for Fiscal Years 1994 Through 1996.

**CONTACT PERSON FOR INFORMATION:** Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: August 2, 1994.

**Patricia D. Batie,**

*Corporate Secretary.*

[FR Doc. 94–19148 Filed 8–2–94; 2:57 pm]

BILLING CODE 7050–01–M

# Corrections

Federal Register
Vol. 59, No. 149
Thursday, August 4, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Parts 405 and 414**

**[BPD–770–CN]**

**RIN 0938–AG22**

## Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1994

*Correction*

In rule document 94-17222 beginning on page 36069 in the issue of Friday, July 15, 1994, the tables appearing on pages 36069 through 36071 should have appeared as follows:

1. On page 63653, the following codes are corrected to read:

| HCPCS+ | MOD | Description | RUC recommended work RVUs | Specialty recommended work RVUs | HCFA decision |
|---|---|---|---|---|---|
| *15788 | | Chemical peel, face, epiderm | None | 5.00 | Decreased. |
| *15789 | | Chemical peel, face, dermal | None | 6.59 | Decreased. |
| *15792 | | Chemical peel, nonfacial | None | 4.00 | Decreased. |
| *15793 | | Chemical peel, nonfacial | None | 5.34 | Decreased. |

2. On page 63662, the following codes are corrected to read:

| HCPCS+ | MOD | Description | RUC recommended work RVUs | Specialty recommended work RVUs | HCFA decision |
|---|---|---|---|---|---|
| 97545 | | Work hardening | None | 1.70 | (b). |
| 97546 | | Work hardening | None | .85 | (b). |

*F. Pages 63722 through 63836, Addendum B*

1. On page 63722, the following codes are corrected to read:

| HCPCS[1] | MOD | Status | Description | Work RVUs | Practice expense RVUs[2] | Malpractice RVUs | Total | Global period | Update |
|---|---|---|---|---|---|---|---|---|---|
| 33401 | | C | Valvuloplasty, open | 0.00 | 0.00 | 0.00 | 0.00 | 090 | S |
| 33403 | | C | Valvuloplasty, w/cp bypass. | .00 | .00 | .00 | .00 | 090 | S |
| 33406 | | C | Replacement, aortic valve. | .00 | .00 | .00 | .00 | 090 | S |
| 33413 | | C | Replacement, aortic valve. | .00 | .00 | .00 | .00 | 090 | S |

| HCPCS[1] | MOD | Status | Description | Work RVUs | Practice expense RVUs[2] | Malpractice RVUs | Total | Global period | Update |
|---|---|---|---|---|---|---|---|---|---|
| 33414 | | C | Repair, aortic valve ..... | .00 | .00 | .00 | .00 | 090 | S |
| 33471 | | C | Valvotomy, pulmonary valve. | .00 | .00 | .00 | .00 | 090 | S |
| 33475 | | C | Replacement, pulmonary valve. * | .00 | .00 | .00 | .00 | 090 | S |
| 33505 | | C | Repair artery w/tunnel . | .00 | .00 | .00 | .00 | 090 | S |
| 33506 | | C | Repair artery, translocation. | .00 | .00 | .00 | .00 | 090 | S |
| 33600 | | C | Closure of valve ..... | .00 | .00 | .00 | .00 | 090 | S |
| 33602 | | C | Closure of valve ..... | .00 | .00 | .00 | .00 | 090 | S |
| 33606 | | C | Anastomosis/artery-aorta. | .00 | .00 | .00 | .00 | 090 | S |
| 33608 | | C | Repair anomaly w/conduit. | .00 | .00 | .00 | .00 | 090 | S |
| 33610 | | C | Repair by enlargement | .00 | .00 | .00 | .00 | 090 | S |

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2]* Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

2. On page 63723, the following codes are corrected to read:

| HCPCS[1] | MOD | Status | Description | Work RVUs | Practice expense RVUs[2] | Malpractice RVUs | Total | Global period | Update |
|---|---|---|---|---|---|---|---|---|---|
| 33611 | | C | Repair double ventricle | 0.00 | 0.00 | 0.00 | 0.00 | 090 | S |
| 33612 | | C | Repair double ventricle | .00 | .00 | .00 | .00 | 090 | S |
| 33615 | | C | Repair (simple fontan) . | .00 | .00 | .00 | .00 | 090 | S |
| 33617 | | C | Repair by modified fontan. | .00 | .00 | .00 | .00 | 090 | S |
| 33619 | | C | Repair single ventricle . | .00 | .00 | .00 | .00 | 090 | S |
| 33692 | | C | Repair of heart defects | .00 | .00 | .00 | .00 | 090 | S |
| 33697 | | C | Repair of heart defects | .00 | .00 | .00 | .00 | 090 | S |
| 33698 | | C | Repair of heart defects | .00 | .00 | .00 | .00 | 090 | S |
| 33722 | | C | Repair of heart defect .. | .00 | .00 | .00 | .00 | 090 | S |
| 33732 | | C | Repair heart-vein defect. | .00 | .00 | .00 | .00 | 090 | S |
| 33736 | | C | Revision of heart chamber. | .00 | .00 | .00 | .00 | 090 | S |
| 33766 | | C | Major vessel shunt ..... | .00 | .00 | .00 | .00 | 090 | S |
| 33767 | | C | Atrial septectomy/septostomy. | .00 | .00 | .00 | .00 | 090 | S |
| 33770 | | C | Repair great vessels defect. | .00 | .00 | .00 | .00 | 090 | S |
| 33771 | | C | Repair great vessels defect. | .00 | .00 | .00 | .00 | 090 | S |
| 33853 | | C | Repair septal defect ..... | .00 | .00 | .00 | .00 | 090 | S |

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2]* Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

3. On page 63724, the following codes are corrected to read:

| HCPCS[1] | MOD | Status | Description | Work RVUs | Practice expense RVUs[2] | Malpractice RVUs | Total | Global period | Update |
|---|---|---|---|---|---|---|---|---|---|
| 33917 | | C | Repair pulmonary artery. | 0.00 | 0.00 | 0.00 | 0.00 | 090 | S |
| 33918 | | C | Repair pulmonary atresia. | .00 | .00 | .00 | .00 | 090 | S |
| 33919 | | C | Repair pulmonary atresia. | .00 | .00 | .00 | .00 | 090 | S |
| 33920 | | C | Repair pulmonary atresia. | .00 | .00 | .00 | .00 | 090 | S |
| 33922 | | C | Transect pulmonary artery. | .00 | .00 | .00 | .00 | 090 | S |

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2]* Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

4. On page 63733, HCPCS code 43248 is corrected to read as follows:

| HCPCS[1] | MOD | Status | Description | Work RVUs | Practice expense RVUs[2] | Malpractice RVUs | Total | Global period | Update |
|---|---|---|---|---|---|---|---|---|---|
| 43248 | | A | Upper GI endoscopy/ guidewire. | 3.18 | *4.14 | 0.34 | 7.66 | 000 | N |

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2]* Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

5. On page 63749, the third appearance of HCPCS code 59020 is corrected to read as follows:

| HCPCS[1] | MOD | Status | Description | Work RVUs | Practice expense RVUs[2] | Malpractice RVUs | Total | Global period | Update |
|---|---|---|---|---|---|---|---|---|---|
| 59020 | 26 | A | Fetal contract stress test. | 0.67 | *0.87 | 0.19 | 1.73 | 000 | S |

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2]* Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

6. On page 63764, the following code is corrected to read:

| HCPCS[1] | MOD | Status | Description | Work RVUs | Practice expense RVUs[2] | Malpractice RVUs | Total | Global period | Update |
|---|---|---|---|---|---|---|---|---|---|
| 70551 | 26 | A | Magnetic image, brain (MRI). | 1.50 | 0.67 | 0.10 | 2.27 | XXX | N |

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2]* Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

7. On page 63799, the following code is added to read:

| HCPCS[1] | MOD | Status | Description | Work RVUs | Practice expense RVUs[2] | Malpractice RVUs | Total | Global period | Update |
|---|---|---|---|---|---|---|---|---|---|
| 86423 | | D | Radioimmunosorbent test IGE. | 0.00 | 0.00 | 0.00 | 0.00 | XXX | O |

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2]* Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

8. On page 63836, the following codes are corrected to read:

| HCPCS[1] | MOD | Status | Description | Work RVUs | Practice expense RVUs[2] | Malpractice RVUs | Total | Global period | Update |
|---|---|---|---|---|---|---|---|---|---|
| J7030 | | E | Infusion, normal saline solution. | 0.00 | 0.00 | 0.00 | 0.00 | XXX | O |
| J7040 | | E | Infusion, normal saline solution. | .00 | .00 | .00 | 0.00 | XXX | O |
| J7042 | | E | 5% dextrose/normal saline. | .00 | .00 | .00 | 0.00 | XXX | O |
| J7050 | | E | Infusion, normal saline solution. | .00 | .00 | .00 | 0.00 | XXX | O |
| J7051 | | E | Sterile saline or water .. | .00 | .00 | .00 | 0.00 | XXX | O |
| J7060 | | E | 5% dextrose/water ..... | .00 | .00 | .00 | 0.00 | XXX | O |
| J7070 | | E | Infusion, d5w ..... | .00 | .00 | .00 | 0.00 | XXX | O |
| J7120 | | E | Ringers lactate infusion | .00 | .00 | .00 | 0.00 | XXX | O |

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2]* Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

BILLING CODE 1505-01-D

federal register

Thursday
August 4, 1994

Part II

# Environmental Protection Agency

40 CFR Part 52
Clean Air Act Sanctions; Final Rule and Notice

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[AD–FRL–5023–3]**

## Selection of Sequence of Mandatory Sanctions for Findings Made Pursuant to Section 179 of the Clean Air Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is promulgating a rule governing the order in which the sanctions shall apply under the mandatory sanctions provision of the Clean Air Act (Act), as amended, after EPA makes a finding of failure specific to any State implementation plan (SIP) or plan revision required under the Act's nonattainment area provisions. This final rule provides that the offset sanction shall apply in an area 18 months after the date on which EPA makes such a finding with regard to that area and that the highway sanctions shall apply in that area 6 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 EPA has already made or that EPA will make in the future, except when EPA determines through a separate rulemaking to change the sanction sequence for one or more specific circumstances. The public will have an opportunity to comment on any such separate rulemaking.

**EFFECTIVE DATES:** This action will become effective on September 6, 1994.

**ADDRESS(ES):** 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 Air and Radiation Docket and Information Center, Room M–1500, Waterside Mall, U.S. EPA, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher Stoneman, Sulfur Dioxide/Particulate Matter Programs Branch, Mail Drop 15, Office of Air Quality Planning and Standards, U.S. EPA, 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. Introduction*

On October 1, 1993, EPA proposed a rule (58 FR 51270) governing the sequence of mandatory sanctions under section 179(a) (42 U.S.C. 7509(a)) of the amended Act. The document included extensive background on the Act, some of which is briefly resummarized in this background section because it relates directly to the Act's sanction provisions. The information not repeated concerns the overview at pages 51270–2 of the proposal provided on the Clean Air Act Amendments of 1990 (1990 Amendments), title I requirements of the Act, and EPA action on SIP's. This background section also summarizes the proposal and the rationale.

### *B. Consequences of State Failure*

#### 1. Section 179(a) Scope and Findings

The 1990 Amendments revised the law concerning sanctions [1] to address State failures to comply with the requirements of the Act. Under section 179(a) of the Act, for any plan or plan revision required under part D of title I or required in response to a finding of substantial SIP inadequacy under section 110(k)(5) (42 U.S.C. 7410(k)(5)),[2] the Act sets forth four findings [3] that 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 a submitted SIP or SIP element fails to meet the completeness criteria established pursuant to section 110(k) (42 U.S.C. 7410(k)); (2) a finding under section 179(a)(2) where 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 made any other submission that fails to meet the completeness criteria or has made a required submission that is disapproved by 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.

The EPA makes section 179(a) findings of failure to submit and findings of incompleteness via letters from EPA Regional Administrators to State governors or other State officers to whom authority has been delegated.[4] 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)(A), EPA is not required to go through notice-and-comment rulemaking.[5] For section 179(a)(2) and section 179(a)(3)(B) findings of disapproval, the **Federal Register** document in which EPA takes final action disapproving the submittal (after notice and comment) initiates the sanctions clock. For section 179(a)(4)

[1] The 1990 Amendments 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.

[2] 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 national ambient air quality standard (NAAQS).

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

[4] 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.

[5] Notice and comment considerations vis-a-vis findings of failure to submit and incompleteness are discussed in the proposal at page 51272, footnote 7, and in section IV.G. of this document.

findings of nonimplementation, the sanctions clock starts when EPA makes a finding of nonimplementation in the **Federal Register** through notice-and-comment rulemaking. For both disapprovals and findings of nonimplementation, the clock actually starts on the date the final **Federal Register** actions are effective.

2. Section 179(b) Sanctions

Under section 179(b), two sanctions are available for selection by EPA following a section 179(a) finding.[6] One available sanction is a restriction on highway funding, as provided in section 179(b)(1) (42 U.S.C. 7509(b)(1)), which is discussed in the proposal at pages 51273–51274. The other available sanction is the offset sanction, as provided in section 179(b)(2) (42 U.S.C. 7509(b)(2)), which is also discussed in the proposal at page 51274.

3. Application and Timing of Section 179(b) Sanctions

Although application of section 179(b) sanctions may become mandatory when EPA makes a finding under section 179(a) (if the State does not correct the deficiency), it is not immediate. Instead, section 179(a) provides for a sanction "clock," which is described in the proposal at page 51274. Generally, under section 179(a)'s sanction clock, the sanction selected by EPA applies if the deficiency that prompted the finding is not corrected before the sanction clock expires. (The sanction clock is further discussed in section II.B.3. of this document.)

*C. Notice of Proposed Rulemaking*

1. Proposal

In the proposal, EPA proposed that the section 179(b)(2) offset sanction would apply in an area 18 months from the date when EPA makes a finding under section 179(a). Furthermore, EPA proposed that the section 179(b)(1) highway sanction would apply in an area 6 months following application of the offset sanction. The EPA proposed to sequence the application of sanctions under section 179(a) in this manner in all cases unless EPA determines, through individual notice-and-comment rulemaking, that the highway sanction will apply first.

The proposal addressed the sequence in which sanctions shall apply as required 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 or 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.[7] The proposal did not encompass findings 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.[8] It also does not encompass any findings EPA may make under other titles of the Act (e.g., section 502(d) for operating permitting programs).

2. Rationale for Sanction Order

At pages 51274–51275 of the proposal, EPA described the purpose sanctions can serve. One function is to encourage compliance with the Act's requirements. A second function of sanctions is to protect and preserve air quality in areas until the deficiency prompting the sanctions-initiating finding can be corrected.

In the proposal at page 51275, for three reasons, EPA proposed that, as a general matter, the offset sanction apply at 18 months followed by the highway sanction 6 months thereafter. First, EPA stated 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.

Second, the proposal stated 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 EPA has promulgated national ambient air quality standards (NAAQS) such as carbon monoxide (CO), PM–10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers), 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 sulfur dioxide ($SO_2$).)

Third, 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 EPA intends to effectuate it, as discussed in the proposal at pages 51275–51277.

In addition, EPA noted in the proposal that it 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 6 months thereafter, then the highway sanction would not apply and EPA and other affected agencies (most notably the Department of Transportation (DOT)) would not be faced with its comparatively greater implementation and administration burden.

The EPA, therefore, proposed, as a general matter, that the offset sanction apply before the highway funding sanction following a section 179(a) finding. The EPA recognized, however, that in specific cases the particular circumstances may lead EPA to conclude that it is more appropriate for the highway sanction to apply first. Therefore, EPA has specifically noted that it may go through notice-and-comment rulemaking for the highway sanction to apply after 18 months and the offset sanction 6 months thereafter. (The sanction sequence rationale is further discussed in section II.B.1. of this document.)

3. Sanction Effectuation

At pages 51275–51277 of the proposal, EPA describes how the offset sanction applies and notes that, under the highway sanction, EPA imposes a prohibition on approval by the Secretary of DOT of certain highway projects and grants. Thus, the highway sanction is not directly implemented by EPA. However, EPA noted that it is in the

[6] In addition, section 179(a) provides for an air pollution grant sanction that applies to grants the 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).

[7] 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 and the Consolidated Metropolitan Statistical Area containing the District of Columbia (see "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" at page 13527 (57 FR 13498)). 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 for volatile organic compounds (VOC) sources).

[8] 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) the Administrator makes" a finding under section 179(a) with respect to any portion of the State, subject to certain limitations (57 FR 44534, Sept. 28, 1993). The selection of sanctions being made by this action, however, does not apply to the imposition of sanctions by EPA under section 110(m). Note that sanction selection for section 110(m) findings will be made through notice-and-comment rulemaking independent from this action.

process of developing procedures with DOT to provide for the coordinated implementation of the highway sanction. (Sanction effectuation is further discussed in section II.B.2 of this document.)

4. Opportunity for Comment

As discussed above, under section 179(a), the Act requires that sanctions apply if the deficiency that prompted EPA's finding is not corrected within the timeframes prescribed. The only discretion afforded EPA is which of the two section 179(b) sanctions applies at 18 months and which 6 months thereafter. The proposal noted that if in the future EPA makes exceptions to this rule, then in individual notice-and-comment rulemakings EPA will seek comment on whether the highway sanction shall apply after 18 months and the offset sanction shall apply 6 months thereafter given the circumstances at hand.

The proposal also noted that the Administrative Procedure Act (APA) provides citizens with a means that could be used to petition EPA to propose that the highway sanction apply first. The APA, 5 U.S.C. 553(e), provides that "Each agency (including 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 EPA to propose that the highway sanction apply first with respect to a section 179(a) finding covered by this action.

## II. Today's Action

### *A. Final Action*

By this document, EPA is promulgating a rule which provides that the section 179(b)(2) offset sanction shall apply in an area 18 months from the date when EPA makes a finding under section 179(a) with regard to that area if the deficiency prompting the finding is not corrected within such period. The final rule also provides that the section 179(b)(1) highway sanction shall apply in an area 6 months following application of the offset sanction in cases where the deficiency has still not been corrected within that period. The section 179(b) sanctions shall be sequenced in this manner in all cases unless EPA proposes the highway sanction to apply first through separate notice-and-comment rulemaking. This final rule applies to plan or plan revisions required under part D but does not apply to plans or plan revisions required under part D found substantially inadequate pursuant to section 110(k)(5). The proposed rule applied to both types of SIP's; a discussion of why the latter type of SIP's—commonly known as part D "SIP calls"—are not covered by the final rule is in section II.C.3. This rule also has the immediate effect of applying the offset sanction on September 6, 1994 in affected areas for which the Administrator has not determined that the 18-month sanction clock has expired by that date and for which the deficiency prompting the finding has not been corrected by that date. Specifically, in the notice section of today's **Federal Register**, EPA is providing a list of areas that will be potentially subject to sanctions on September 6, 1994.

Note that the proposed rule did include tables in which EPA intended to list areas subject to sanctions. In the final rule, EPA has removed the tables from the rule and decided to provide information on areas that will be potentially subject to sanctions in the separate notice mentioned above. (Sections II.C.5. and III.B. below include a discussion of why the tables were removed from the proposed rule and why such removal does not carry any substantive significance.)

### *B. Summary of Comments and Responses*

With one exception, this section consists of a brief summary of the comments received on the proposal and EPA's responses. A more detailed summary of comments and EPA's responses can be found in the docket in a document entitled " Selection of Sequence of Mandatory Sanctions for Findings Made Pursuant to Section 179 of the Clean Air Act: Detailed Summary of Comments and EPA's Responses" (herein referred to as "Detailed Summary of Comments"). The one exception is for the sanction clock policy; a detailed summary is provided here, as well as in the companion document, in order to fully explain in the **Federal Register** the changes EPA has made to the final rule in this area and because of the complexity of this issue.

1. Sanction Sequence and Rationale

a. *Summary of Comments.* The EPA's proposal for the sequence of mandatory sanctions and the rationale are provided in sections I.C.1. and I.C.2. of this document, as well as in the proposal at pages 51274–5. The EPA received 14 comments on this part of the proposed rule. Comments on the sanction sequence and rationale can generally be considered in four groups: (1) Commenters who believe the sequence should be reversed with the highway sanction applying first, (2) commenters who believe that EPA should determine sanction order on a case-by-case basis, (3) commenters who believe that the nature of the deficiency should be considered in determining sanction sequence, and (4) commenters who support the sequence as proposed.

Four commenters stated that the sequence in which sanctions apply should be reversed with the highway sanction generally applying first. Several of the commenters contend that the highway sanction will be more effective at compelling State correction of SIP deficiencies because it would have greater economic impact, and it will be more effective at addressing political and statewide failures. One commenter disagrees with EPA's rationale that the offset sanction is more likely to produce a greater air quality benefit, arguing instead that the highway sanction better encourages early State compliance. Several commenters challenge EPA's rationale that the offset sanction potentially applies to all criteria pollutants; the commenters argue that the fact that stationary sources emit more types of pollutants is irrelevant since, in the proposed rule, the offset sanction applies only to the pollutant(s) in the deficiency. The commenters also raise an argument that EPA's proposed sequence unfairly burdens industry when the SIP deficiency is State-caused and that sources will be unfairly penalized due to project location and timing.

Four commenters believe that EPA should determine sanction order on a case-by-case basis. These commenters express concern that EPA's streamlined approach provides insufficient notice of sanctions and leaves many sanction application details unclear. One commenter argues that EPA should streamline its own rulemaking processes rather than deny notice to affected parties. These commenters were also concerned that general application of the offset sanction would negatively impact stationary sources. One commenter argues economic competitiveness and air quality will deteriorate under the offset sanction. Two commenters were concerned that because of the length of the EPA rulemaking process stationary sources will bear the brunt of the sanction burden.

Two commenters believe that the nature of the SIP deficiency should be considered in determining sanction sequence. One commenter believes that the sanction chosen should be linked to the SIP deficiency and that EPA must conduct notice-and-comment

rulemaking to determine whether the highway sanction applies first as to specific types of SIP deficiencies. The commenter is concerned that stationary sources will bear the brunt of the sanctions burden, and that this result could stifle economic development.

Three commenters support the proposed sequence of sanctions. One commenter supports the position that the link between the highway sanction and air quality benefits is uncertain and another commenter agrees that the offset sanction provides a quantifiable and more likely air quality benefit. Another commenter supported EPA's concerns regarding the administrative and implementation burdens of the highway sanction as a basis for the offset sanction applying first.

b. *Response to Comments.* In this final rule, EPA has maintained the proposed sanction sequence with the offset sanction generally applying first and the highway sanction second. The EPA continues to believe this sequence is supported by the proposed rationales that the offset sanction (compared to the highway sanction) will:

(1) Provide a more certain and direct air quality benefit,

(2) Potentially affect more criteria pollutants, and

(3) Be easier to implement and administer. The EPA disagrees with the comments that highway sanctions will always more effectively address SIP-related deficiencies and should, therefore, be generally applied first. In addition, EPA does believe that the offset sanction will more likely produce a net air quality benefit. In some cases, the offset sanction may be more effective at resolving SIP deficiencies. For example, in an area that is undergoing significant economic growth, the offset sanction could help bring pressure through stationary sources wishing to expand or locate in the area and which are faced with the need for an additional emission offset increment. Furthermore, offsets achieved by such a sanction would benefit air quality in the affected area. However, in particular instances, the EPA does not deny that the offset sanction may not be as effective because, for example, the area may be economically depressed and not experiencing growth. In such a case, there may be less air quality benefit and perhaps less pressure to correct the deficiency in applying the offset sanction first.

Nonetheless, overall EPA continues to believe that conceptually the offset sanction (compared to the highway sanction) provides a more certain, direct air quality benefit in the near and long term and potentially covers more pollutants. An increased new source review (NSR) offset ratio necessarily reduces air pollutant emissions as sources modify or locate in an area under the offset sanction. By contrast, the highway sanction may not directly reduce overall motor vehicle emissions in the near term and any air quality benefits resulting from the highway sanction would be indirect, as application of the highway sanction would not necessarily prevent motorists from driving, nor even necessarily result in overall emissions reductions, at least in the short term. The EPA recognizes that in some instances it may be more appropriate for the highway sanction to apply to address a political failure and believes there are adequate mechanisms provided under the rule to address these instances.[9]

The EPA did not intend to suggest in the proposal that the offset sanction will apply, in every case, to all criteria pollutants. The offset sanction will apply only to all criteria pollutants (and their precursors) for which the area is subject to the section 173 (42 U.S.C. 7503) offset requirement when the SIP deficiency is general in nature. When the finding is specific to one or more pollutants (and its/their precursor(s)), the sanction applies only to those pollutants (and/or precursor(s)). The statement in the proposal intended that the offset can potentially affect all criteria pollutants, either because of pollutant-specific findings or general findings. This means that, regardless of whether the finding is pollutant-specific or general, the offset sanction will generally apply at least to the pollutants of direct concern, and sometimes to others as well. On the other hand, the highway sanction will potentially affect only those pollutants mobile sources emit significantly and not, for instance, lead or $SO_2$. However, EPA also realizes that since CO nonattainment area problems are due primarily to mobile sources, arguably application of the offset sanction may not address the more significant sources contributing to CO nonattainment problems. Nonetheless, the offset sanction still applies to CO for nonattainment NSR purposes and thus will affect sources subject to nonattainment NSR that wish to locate or expand in a CO nonattainment area, which would provide some air quality benefit in the area under the offset sanction. Therefore, EPA continues to believe that overall the offset sanction is more likely to produce a greater air quality benefit than the highway sanction because, as sources locate in an area, direct emission reductions will be achieved through the 2-to-1 offset for potentially any of the criteria pollutants.

With respect to imposing sanctions on a case-by-case basis, EPA believes there are two main disadvantages to this approach which have led EPA to reject it. First, the individual notice-and-comment rulemakings that would be needed for implementing the sanctions on a case-by-case basis would impose significant demands on EPA's resources. These resources could otherwise be spent on activities that more directly serve the goal of the Act, namely, clean air. Second, the approach taken in the final rule will provide certainty and sufficient notification to the parties affected about the details of sanction application and consistency in the implementation of section 179. These details are further discussed in section III.A. and in the detailed summary of comments document.

As to establishing a rule that links the first sanction to the deficiency on which the sanction is based, EPA believes that approach fails to consider other important considerations with respect to sanctions such as which sanction is more likely to yield the greater air quality benefit. The EPA believes, as a general matter, that the sanction that results in the greater air quality benefit is a more important consideration than selecting the sanction sequence based primarily on the nature of the deficiency.

At the same time, EPA recognizes that in some cases it may be more appropriate to apply the highway sanction first if the circumstances of the deficiency warrant and the offset sanction is unlikely to yield significant air quality benefits. The EPA believes the rule provides the flexibility to do so. Additionally, EPA cannot predict, across all sanction findings, which sanction will more effectively address State inaction and thus could not base the general sanction sequence proposal on that factor. Fundamentally, EPA has based its sanction sequencing rationale primarily on the basis of which sanction EPA believes is likely to yield the greater air quality benefit. It is impossible to gauge the impact since the universe of areas which will be sanctioned and for what duration are not known.

The EPA does not disagree that the offset sanction has the potential to impact industry and that this burden may be greater on industry than on the transportation sector. However, by

[9] As noted in section I.C.4. of this notice, under the APA citizens can petition the EPA for rulemaking to propose the highway sanction to apply first.

including the offset sanction in the Act, Congress clearly intended that certain sources, by virtue of the timing and location of their projects, would be impacted.

2. Sanction Effectuation

A discussion of EPA's approach for effectuating the offset and highway sanctions is provided in section I.C.3. of this document and at pages 51275–7 of the proposal. The following is a brief summary of major comments and EPA's responses.

a. *Major Comments.* (1) Offset Sanction. Comments on offset sanction effectuation addressed both the source and pollutant applicability aspects of EPA's proposal. One commenter objects to the timing of the applicability of the offset sanction and believes EPA's proposed approach is contrary to past EPA practice. The commenter argues that applying the increased offset ratio to all sources that have not received a permit as of the date the sanction begins would stop many sources during the permitting process for reasons beyond their control. The commenter believes that in the past EPA has avoided these problems by applying tighter NSR requirements only where permit applications were not complete when the requirements became effective. The commenter recommends EPA continue with this approach.

Two comments concern the pollutant applicability of the offset sanction. One commenter objects to the application of the offset requirement to both ozone precursors (nitrogen oxides ($NO_X$) and volatile organic compounds (VOC)) even when the deficiency relates only to one of the pollutants. In support, the commenter notes the broad nature of section 179 and the manner in which $NO_X$ emissions are treated under the Act vis-a-vis VOC emissions. Regarding PM–10 precursors, the commenter argues that the offset sanction should apply to precursors only in those areas where EPA has approved a PM–10 SIP control strategy imposing the offset requirement on PM–10 precursors.

Another commenter believes that regardless of the SIP deficiency the offset sanction should apply to all criteria pollutants and precursors. In support, the commenter argues that section 179 references section 173, which applies to all offset requirements in title I of the Act, and that this reflects a clear Congressional intent to apply the offset sanction to these pollutants. The commenter also believes that areas that have not yet received a section 182(f) (42 U.S.C. 7511a(f)) $NO_X$ exemption from the section 173 offset requirements should remain subject to the increased offset ratio for $NO_X$ until EPA grants an exemption.

(2) *Highway Sanction.* One commenter requests that the rule include a requirement that EPA notify several government entities of highway sanctions to focus multi-agency resources on resolving SIP deficiencies. Another commenter believes that the flow of flexible funds for certain programs (e.g., congestion mitigation air quality improvement program) should continue to flow if sanctions apply because the funds are important for achieving the Act's goals by improving transit.

b. *Response to Comments.* (1) Offset Sanction Applicability. Regarding offset sanction source and pollutant applicability, in the final rule, EPA has maintained the approaches in the proposal.

On source applicability, EPA believes it is important to maximize the air quality benefit of the offset sanction by requiring that sources whose permits are issued after the date the offset sanction applies comply with a 2-to-1 emission offset requirement. Contrary to the comment, the source applicability definition is not a departure from all past EPA practices because historically EPA has not always used the "complete application" definition. (The different source applicability definitions EPA has used in the past are discussed in the detailed response to comments document.) Therefore, EPA believes that past practice does not constrain it from determining today that it is important to enhance the effectiveness of the offset sanction by defining source applicability on a permit issuance basis.

Moreover, EPA believes that once the offset sanction applies, it would be a violation of the sanction for a permit to be issued with an emission offset of less than 2-to-1. The plain language of section 179(a) and section 179(b)(2) does not provide for nor contemplate any grace period based on whether a source has submitted a complete application.

Regarding pollutant applicability of the offset sanction, EPA believes the proposed applicability is reasonably supported and will have the potential to effectively protect air quality. Section 179(b)(2) generally references the offset requirements of section 173 and does not restrict EPA's ability to base the applicability of the sanction on a pollutant or pollutants (and its/their precursor(s)). Moreover, pollutant-specific application of the offset sanction is consistent with the requirements of section 179. Section 179(b)(2)'s language providing that "the ratio of emission reductions to increased emissions shall be at least 2 to 1" is general enough such that EPA can determine the most reasonable method to apply the sanction. While section 179(b)(2) references the broader section 173 requirement, EPA believes it is more reasonable, with one caveat,[10] to apply the offset sanction to the criteria pollutants specifically related to the SIP deficiency in question. Pollutant-specific application of the offset sanction will encourage the State to correct its SIP deficiencies and will provide reductions in emissions of the relevant pollutant in the interim, without unnecessarily punishing stationary sources in cases where the State's program for other pollutants is adequate.

Regarding ozone and PM–10 precursors, EPA is maintaining the approach in the proposal that the sanction applies to ozone and PM–10 precursors. The caveat to that general rule has expanded in one minor respect with respect to the ozone precursor $NO_X$. As provided in the proposed rule, sources will need to achieve the increased offset ratio for VOC and $NO_X$ when the finding concerns an ozone requirement unless EPA approves a section 182(f) demonstration that the Act's $NO_X$ nonattainment NSR requirements should not apply. In addition, EPA has added the exception that if the area otherwise is not subject to the section 173 offset requirement for $NO_X$ (e.g., submarginal ozone nonattainment areas), then sources in that area would not be subject to that requirement under the offset sanction (see sections 182(f) and 182(b)(2)). This exception is necessary in light of the specific language of the offset provision, which ties the offset sanction specifically to offsets required under section 173. For PM–10 precursors, EPA has retained the caveat for cases in which EPA has made a section 189(e) (42 U.S.C. 7513a(e)) determination for an area that PM–10 precursors are not significant.

(2) Highway Sanction Effectuation. The issues raised by the commenters are not a subject of this rulemaking. The DOT has primary responsibility for implementing the highway sanction and EPA is coordinating with DOT on the development of procedures for that purpose.

[10] Where the SIP deficiency is general, the offset sanction applies to the criteria pollutant(s) (and its/their precursor(s)) for which the area is required to meet the section 173 NSR requirements. (This pollutant applicability definition for general SIP deficiencies is also discussed in section II.C.5. below.)

*3. Sanction Clock Policy*

a. *Summary of Proposal.* In the proposal, EPA described its proposed policy with respect to the sanctions clock at pages 51272–51273.[11] Under that interpretation, once the sanctions clock has started upon EPA making a finding under section 179(a), in order to stop the clock, 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), EPA must determine that the State has come into compliance by correcting the deficiency that prompted the finding that resulted in the application of one or both sanctions.

For a 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 proposal provided that EPA will stop the sanctions clock or remove any sanctions applied upon 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). Note that EPA's July 9, 1992 SIP processing guidance indicated that if the 18-month sanction clock elapses during a completeness review, sanctions would not be imposed unless and until EPA determined the plan to be incomplete.[12] In such a case, the 18-month clock would continue to run so that if EPA determined the plan to be incomplete after 18-months had elapsed, sanctions would immediately apply.

The proposal provided that if 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 EPA and 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 proposal provided that the sanctions clock would stop or sanctions would be removed through notice-and-comment rulemaking determining that the State is implementing the approved plan or part of a plan.

b. *Summary of Comments.* Two commenters raise both practical and legal issues with respect to the proposal's sanction clock policy where it indicates that EPA must fully approve SIP submittals before sanctions clocks that are started by disapprovals can be stopped.

The first commenter's practical concern is time. With respect to a sanctions clock started by a disapproval, because of the length of the State's regulatory development, approval and adoption processes and EPA's review period, the interpretation in the proposed rule could result in sanctions being imposed even if a State had fully adopted and submitted the corrective rule. Sanctions would remain in effect until EPA finished its rulemaking approving the corrected rule. The commenter is concerned that the rule could have an adverse impact solely because EPA had not had time to act on SIP revisions that are fully approvable.

The commenter further believes that EPA's policy is not supported by the language of the Act. The commenter argues that the Act elsewhere explicitly distinguishes between correcting the deficiency and EPA's process of approving a SIP. Section 110(c)(1)(B) states that the Administrator must promulgate a Federal implementation plan (FIP) within two years of SIP disapproval "* * * unless the state corrects the deficiency, and the Administrator approves the plan or plan revision * * *." Section 179(a), though, merely provides that sanctions shall apply "unless such deficiency has been corrected * * *" and does not include the phrase regarding EPA plan approval. The commenter believes that EPA cannot ignore the difference between sections 110 and 179 because to do so would constitute "reading out" or rendering meaningless the additional phrase of section 110(c)(1)(B).

To support its legal argument, the commenter states that principles of statutory construction provide that effect must be given to each word in a statutory provision, and that every effort must be made to avoid an interpretation which renders other provisions of the same statute inconsistent, meaningless, or superfluous (*Boise Cascade Corp.* v. *United States Environmental Protection Agency*, 942 F.2d 1427, 1432 (9th Cir. 1991)). The commenter also notes that an agency cannot ignore or "read out" part of a statute (*Natural Resources Defense Council* v. *United States Environmental Protection Agency*, 822 F.2d 104, 113 (D.C. Cir. 1987)).

As an alternative to EPA's proposal, the commenter recommends that the sanctions clock policy for disapprovals follow the process in the proposal for findings of nonsubmittal and incompleteness. The commenter states that under that alternative policy the clock would be stopped if a new submittal is received, pending EPA's determination of whether the deficiency has been corrected. The commenter urges EPA to adopt a consistent policy to stop sanction clocks in all cases upon receiving a revised SIP submittal. If EPA's preliminary review indicates the deficiency has been corrected, then the clock would remain stopped and EPA would proceed to approve the plan through rulemaking. If the deficiency was not corrected initially, the clock would restart via a letter to the State.

A second commenter raised similar concerns with EPA's proposal that actual approval was needed to stop a sanctions clock started by a disapproval. According to the commenter, the clock should be suspended with the submittal to EPA of a completed rulemaking and remain suspended unless EPA disapproves the SIP. The commenter notes that EPA has the opportunity to participate in the State's rulemaking process to ensure the deficiency is corrected.

c. *Response to Comments.* In response to the comments received, EPA reevaluated its proposed sanction clock policy and made two changes.[13]

(1) Overview of Change One. For the reasons stated in subsection (4) of this section II.B.3.c., EPA does not adopt the exact approach set forth by the commenters, which would actually stop a sanctions clock started by a disapproval upon State submittal of a SIP. However, EPA has determined that it is reasonable to temporarily defer and/or stay the application of sanctions, as appropriate,[14] following SIP disapprovals, where EPA proposes to fully approve a SIP revision or proposes to conditionally approve a SIP.[15] In

[11] For general guidance on EPA's interpretation, at the time of proposal, of how the sanctions clock functions and what is 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.

[12] The policy also provided that, following findings of nonsubmittal and incompleteness, sanctions which had applied would continue to apply upon State submittal until the submittal was determined to be complete.

[13] The EPA is also making a clarification to the sanction clock policy which is discussed in section II.C.4.

[14] As discussed below under change two, the proposed sanction clock policy specifically provided for the deferral of sanctions during completeness reviews of SIP's submitted following nonsubmittal and incompleteness findings, but not staying the sanctions. The concept set forth here for initial disapprovals and findings of failure to implement is carried forth from this process developed in the proposal for initial findings of failure to submit or of incompleteness. In carrying this concept over, EPA believes that it is logical and necessary that if the effect of sanction application is to be deferred that sanctions actually applied should be stayed.

[15] Note that a proposed partial or limited approval would not result in the deferral and/or staying of

Continued

addition, EPA has determined that such deferral and/or staying of sanction application is reasonable following findings of nonimplementation [16] where EPA proposes to find that a State is implementing its SIP. Simultaneous with such proposed approval or finding of SIP implementation, EPA will issue a separate, interim final determination that the State has corrected the deficiency that prompted the finding that started the sanctions clock. In all these cases, whether sanctions are deferred and/or stayed depends on the timing of EPA's proposed action vis-a-vis the sanction clocks.

For initial SIP disapprovals where EPA subsequently fully approves the revised SIP, sanctions would be deferred and/or stayed unless and until EPA's proposed full approval was reversed by a proposed disapproval or final disapproval of the revised SIP in whole or in part. At that point, the interim final determination that the deficiency had been corrected would be rescinded or reversed. For initial SIP disapprovals where EPA subsequently proposes to conditionally approve the revised SIP, sanctions would be deferred and/or stayed unless and until EPA reverses its proposed conditional approval by a proposed disapproval or final disapproval of the revised SIP in whole or in part. For initial SIP disapprovals where EPA subsequently conditionally approves the revised SIP in final, sanctions would be deferred and/or stayed unless and until the conditional approval converts to a disapproval, or EPA proposes to disapprove in whole or in part the revised SIP the State submits to fulfill the commitment in its conditionally-approved SIP.[17] When any of these events occur with respect to a proposed or final conditional approval, the interim final determination that the deficiency had been corrected would be rescinded or reversed.

For initial findings of nonimplementation, sanctions would be deferred and/or stayed unless and until EPA reversed its proposed finding that the State was implementing its SIP by proposing to find or finally finding that the State was not implementing its SIP or by withdrawing its proposed finding that the State was implementing its SIP. At the point of that subsequent action, the interim final determination that the State had corrected the deficiency would be rescinded or reversed. (Exactly how the application of sanctions would be deferred and/or stayed following SIP disapprovals and nonimplementation findings is discussed in greater detail below in this section. Change one is reflected in the rule in § 52.31 (d)(2), (d)(3), and (d)(4).)

The rationale for the deferring and staying of sanctions in these cases is that the proposed full or conditional approval or proposed finding that the State is implementing its SIP would be the basis for EPA's interim final determination that the State has corrected the deficiency.[18] When EPA issues this proposal, the Agency indicates that it believes it is more likely than not that the State is complying with the relevant requirements of the Act. The EPA believes it would be inequitable for sanctions to apply in situations where EPA has made such an affirmative finding, even though it is only preliminary. Moreover, EPA believes it would be unfair to apply sanctions merely because the clock had expired before EPA is able to take final action on the submittal in these situations given the length of the rulemaking process.

(2) Overview of Change Two. The second change to the rule concerns the guidance discussed in the preamble to the proposed rule at page 51273, footnote 9, where EPA indicated that if the sanction clock started by a finding of failure to submit or incompleteness expires during a completeness review for a subsequent SIP submittal, the sanction would not apply unless and until EPA found the submittal incomplete. In this instance, EPA intended that the sanction clock would not temporarily stop, but instead would continue to run. During that time, EPA would simply defer the application of the sanction while it reviewed the SIP submittal to determine whether or not the State had corrected the deficiency prompting the finding. Thus, if and when EPA found the SIP incomplete after expiration of the 18-month clock, the sanction would apply on the date EPA found the plan incomplete.[19]

After further analysis of this aspect of the sanction clock policy in the context of addressing comments, EPA has determined that it is inappropriate to defer and/or stay sanctions when sanction clocks elapse during review for completeness of plans submitted by States following findings of nonsubmittal and incompleteness. Therefore, EPA's rule provides that the temporary deferral and staying of the application of sanctions occurs only when EPA takes an affirmative action in which it indicates the Agency's belief that the State has corrected the deficiency prompting the finding (e.g., that the State has corrected the finding of nonsubmittal or incompleteness). The EPA believes this change is necessary since, upon further reflection, EPA realizes that in such a situation there has been no prior affirmative action by EPA preliminarily or finally determining that the State has, in fact, corrected the deficiency. A proposed approval of a revised SIP following a disapproval constitutes such an action as does a proposed finding that a State is implementing its SIP following a finding of nonimplementation. However, mere EPA receipt of a SIP submittal from a State following a nonsubmittal or incompleteness finding does not constitute such an action, since EPA takes no affirmative action preliminarily indicating that the State has submitted a complete SIP, and there is nothing to give rise to an interim final determination that the State has corrected the deficiency.

Under this change, sanctions will apply if a sanction clock expires during a completeness review of a SIP submitted following a nonsubmittal or incompleteness finding. An example illustrates the implications of this change. Suppose EPA finds that a State failed to submit a SIP and then at month 17 the State submits a SIP which the Agency then starts reviewing for completeness. Month 18 arrives and EPA is still reviewing the submittal. Under the approach in the proposal, application of the offset sanction at month 18 would be deferred unless and until EPA found the plan incomplete. Under the final rule, the sanction will apply at month 18 and only be lifted

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the application of sanctions because such actions are associated with proposed partial or limited disapprovals. (For a discussion of partial and limited approvals/disapprovals, see the memorandum entitled "Processing of State Implementation Plan (SIP) Submittals" from John Calcagni to Air Division Directors, Regions I–X, July 9, 1992.)

[16] Although the comments focused on a clock started by a disapproval, EPA has extended its changes to a clock started by a finding of failure to implement, finding no reason to treat findings of failure to implement differently.

[17] On July, 9, 1992, EPA issued a policy that included a discussion of how conditional approvals convert to disapprovals (see memorandum entitled "Processing of State Implementation Plan (SIP) Submittals" from John Calcagni to Air Division Directors, Regions I–X, July 9, 1992). But note that, by this action, EPA is withdrawing the part of the July 1992 guidance that addresses how conditional approvals convert to disapprovals. In the near future, EPA intends to issue additional guidance to address this aspect of the conditional approval policy.

[18] The EPA's final conditional approval would merely continue any stay or deferral initiated by EPA's proposed conditional approval and EPA's simultaneous interim final determination the deficiency has been corrected.

[19] Note that this specific aspect of the proposed sanction clock policy was not actually reflected in the regulatory language of the proposed rule but was discussed in the preamble only.

once EPA takes affirmative action finding the plan complete.

For EPA to continue with the proposed policy of deferring sanctions following nonsubmittal and incompleteness findings, EPA would have to view mere receipt of a submittal from the State as a preliminary correction of the deficiency. However, EPA's view is that receipt of a State plan does not constitute an affirmative EPA determination that the revised SIP is complete.[20] Therefore, it is inappropriate to defer and/or stay sanctions following nonsubmittal and incompleteness findings. Furthermore, once EPA has affirmatively determined the plan is complete, any sanctions clock or any applied sanctions would be permanently stopped. Therefore, it is inappropriate to defer or stay sanctions following nonsubmittal and incompleteness findings until EPA has affirmatively determined the plan is complete.[21] The EPA believes this change, as well as change one, makes the Agency's approach in deferring and staying the application of sanctions more consistent with the requirements of the Act.

[20] Arguably, EPA could make an interim final determination that the State's submittal is complete. However, such an interim determination is impractical and inappropriate for at least two reasons. One, the short time period provided under the Act for EPA to make completeness determinations (i.e., 60 days) indicate that Congress did not intend for EPA (nor contemplate for EPA) to make preliminary completeness determinations. Two, the nature of the completeness review does not lend itself to EPA making preliminary and final determinations. The completeness review is intended as a straightforward exercise to determine if the SIP revision includes the basic elements to warrant further review for overall adequacy. Therefore, there is no room for a preliminary determination; any review sufficient to make such a preliminary determination would be sufficient for EPA's final completeness determination.

[21] A clarification is being made in the final rule which was not specifically addressed in the proposed rule. Following nonsubmittal and incompleteness findings, the final rule effectively provides that sanction clocks can be stopped (and sanctions lifted) only when EPA makes an affirmative completeness finding, and not when SIP's become complete by operation of law pursuant to section 110(k)(1)(B) of the Act. This change is further discussed in section II.C.4. below.

(3) Scenarios Illustrating First Change. The following five scenarios illustrate how sanctions can be deferred and/or stayed following SIP disapprovals and nonimplementation findings.[22] They are provided to clarify change one discussed above. (Section III.A. discusses how the States and the public will be kept informed of the status of sanction application.)

First, if, before month 18, EPA proposes to fully or conditionally approve a plan or proposes to find that a State is implementing its SIP and that action is reversed 24 or more months after the finding, at which time the 18-month clock has expired, application of the offset sanction is deferred until EPA's proposed approval or proposed finding that the State is implementing its SIP is reversed.[23] For both types of findings, the offset sanction applies on the date EPA reverses its preliminary finding. Following disapprovals, where EPA proposed to fully approve the SIP, the reversal would be either a proposed or final disapproval in whole or in part, whichever occurs. Following disapprovals, where EPA proposes to or finally conditionally approves the SIP, the reversal would occur as described in subsection (1) above of this section II.B.3.c. Following findings of nonimplementation, the reversal would be either a proposed or final finding, whichever occurs, that the State was not implementing its SIP. For both disapprovals and nonimplementation findings, the highway sanction applies 6 months from the date the offset sanction applies, unless EPA determines within that period that the State corrected the deficiency prompting the finding. (This scenario is provided for in the rule in § 52.31 (d)(2)(i), (d)(3)(i), and (d)(4)(i).)

The following discussion and Figure 1 provide an example of how this process functions with respect to a sanctions clock started by an initial disapproval. The process would function in the same manner where the initial finding was a finding of failure to implement. Suppose EPA issues a SIP disapproval, initiating the section 179 sanction process. Suppose that the State submits a revised SIP to EPA which EPA proposes to fully or conditionally approve, prior to 18 months from the date the sanctions clock started. The EPA would simultaneously issue an interim final rule, making a finding that the State has corrected the deficiency. In that case, the application of the offset sanction would be deferred. Now suppose that, at month 25, EPA reverses its preliminary determination. The reversal would be a proposal to disapprove the SIP in whole or in part or a final disapproval of the SIP in whole or in part. At month 25 (or, for final actions, on the action's effective date), the offset sanction applies. The highway sanction then applies 6 months later at month 31 (or, for final actions, shortly thereafter, as appropriate), if within that period EPA has not determined that the State has corrected the deficiency.

[22] Note that in the five cases discussed below in the "scenarios illustrating first change," sanctions would apply or reapply when a conditional approval converts to a disapproval just as they do when a proposed full approval is reversed to a disapproval. Note also that, unlike full approvals, the mandatory sanctions process would not cease upon final conditional approval. Following a disapproval, as indicated above, if EPA proposes full approval of the State's revised plan, resulting in the deferral and/or staying of sanction application, and then takes final, full approval action, the mandatory sanctions process ceases. However, if the scenario were one where EPA was conditionally approving the plan, the final conditional approval does not stop the mandatory sanction process because it does not represent EPA's final determination that the SIP is adequate. The EPA will make that determination when it reviews the revised plan the State commits to submitting as part of the conditional approval. Ultimately, of course, if the State fulfills its commitment and EPA approves the State's plan revision, then any sanction clocks are permanently stopped and no sanctions are applied or reapplied.

[23] This scenario assumes that EPA proposes approval prior to 18 months and that EPA's positive finding is reversed after 24 months. In that instance, after 24 months, only the 18-month clock has expired (and not the 6-month clock) because the 6-month clock is not triggered until the offset sanction applies. (Section III.A. below discusses how the section 179 sanction clocks function.) Therefore, in this scenario, the 6-month clock does not start until EPA reverses its positive finding after 24 months. The next paragraph and Figure 1 give an example of how this functions.

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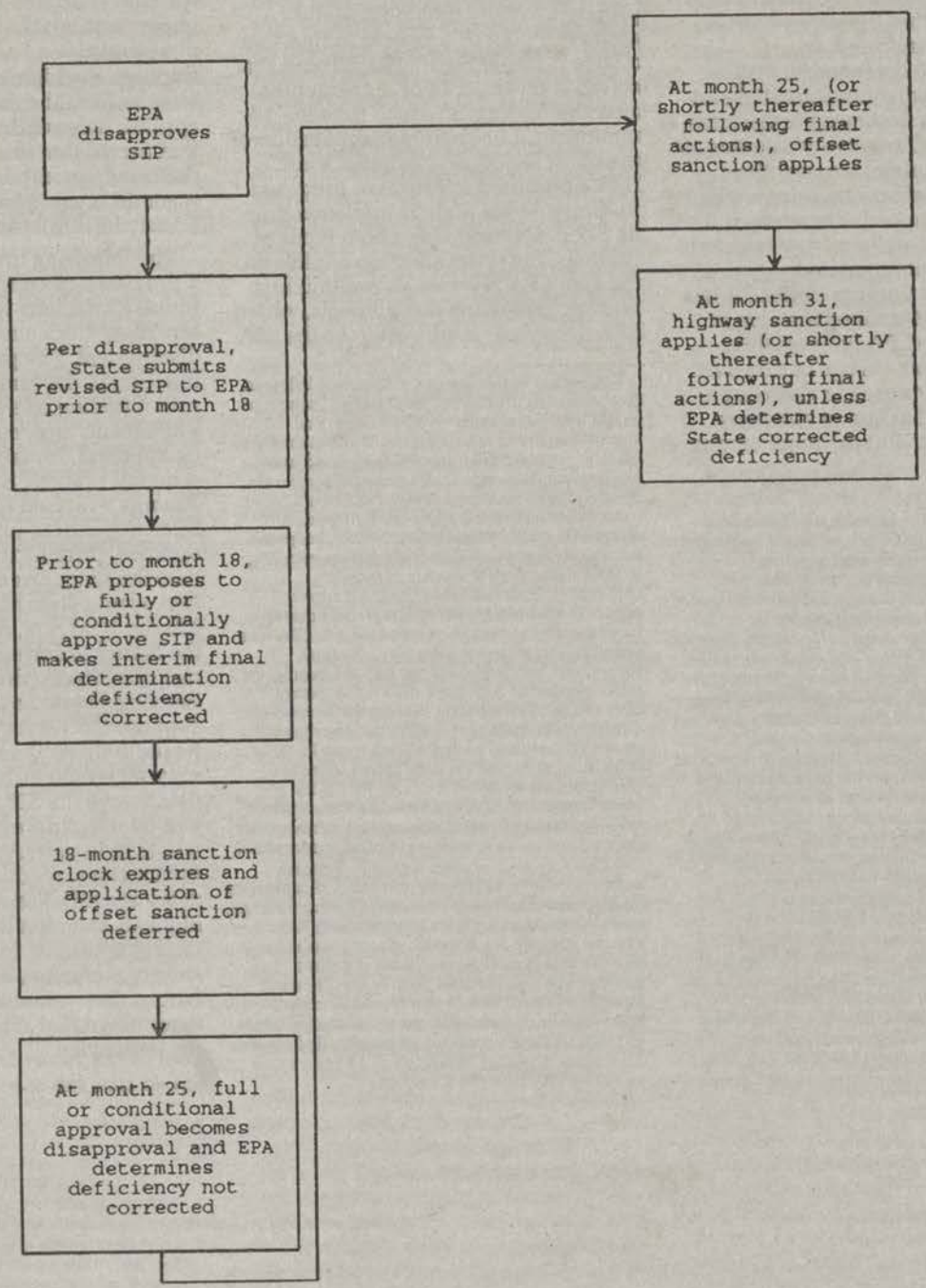
# Figure 1: Case 1 for SIP Disapprovals

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Second, if EPA proposes (before expiration of the 18-month sanctions clock) to fully or conditionally approve a plan or proposes to find that a State is implementing its SIP and that proposal action is reversed before the 6-month clock expires that would have followed upon application of the offset sanction, application of the offset sanction is deferred until such reversal of EPA's proposed finding. The offset sanction applies on the date EPA's proposal finding is reversed (or, for final actions, on the action's effective date). The highway sanction then applies 6 months later if EPA has not determined during that period that the State has corrected the deficiency. (This scenario is provided for in the rule at §§ 52.31 (d)(2)(i), (d)(3)(i) and (d)(4)(i).)

The following discussion and Figure 2 provide an example of how this process functions for a finding of nonimplementation.[24] The process would be the same for an initial disapproval. Suppose EPA makes a finding of nonimplementation, initiating the section 179 sanction process. Suppose that EPA, prior to the end of the 18 month sanctions clock, proposes to find that the State is implementing its approved SIP. At the time of the positive finding, EPA would simultaneously issue an interim final rule, finding that the State has corrected the deficiency.

In this case, the application of the offset sanction would be deferred unless and until EPA reverses its proposed positive finding. Now suppose that EPA, at month 22, reverses its proposed positive finding by withdrawing its proposed finding that the State is implementing its SIP. At month 22 (or, for final actions, on the action's effective date), the offset sanction applies. The highway sanction then applies 6 months later at month 28 (or, for final actions, shortly thereafter, as appropriate), if EPA has not determined that the State has corrected the deficiency.

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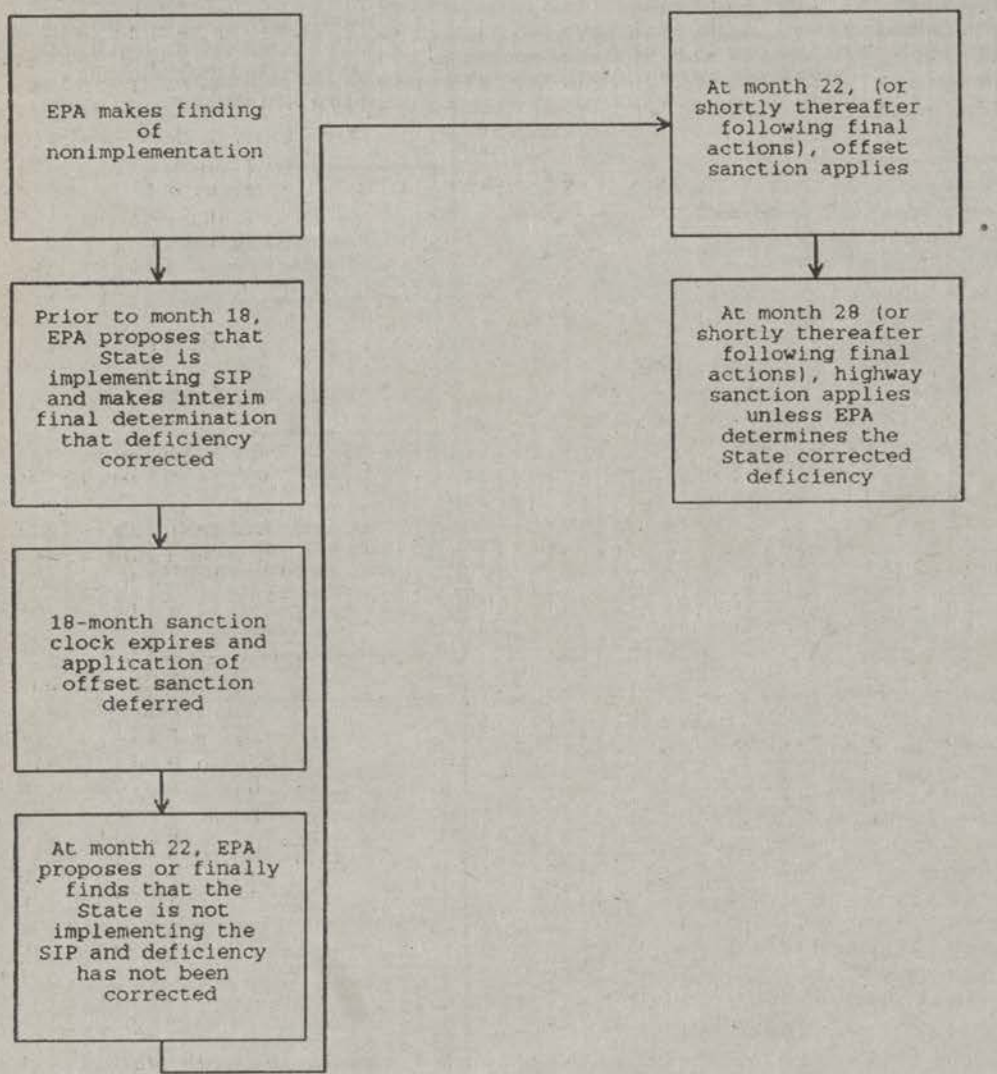
[24] This example is given for a finding of failure to implement, while the other four examples are given for SIP disapprovals, for illustrative purposes only.

Figure 2: Case 2 for Findings of Nonimplementation

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Third, if EPA proposes (after month 18 but before expiration of the subsequent 6-month sanctions clock) to fully or conditionally approve a plan or proposes to find that a State is implementing its SIP, application of the offset sanction is stayed unless and until EPA's proposed positive finding is reversed. (This scenario assumes that EPA's reversal occurs before expiration of the 6-month sanction clock.) For both types of findings, the offset sanction reapplies on the date EPA's preliminary positive determination is reversed. The highway sanction applies 6 months from the date the offset sanction initially applied, if EPA has not determined that the State has corrected the deficiency prompting the finding. (This scenario is provided for in the rule at § 52.31 (d)(2)(ii), (d)(3)(ii) and (d)(4)(ii).)

The following discussion and Figure 3 provide an example of how this process functions for a SIP disapproval. The process is the same where EPA has made an initial finding of failure to implement. Suppose EPA makes a SIP disapproval, initiating the section 179 sanction process. Suppose that the State submits a revised SIP which EPA, after 18 months but before the subsequent 6-month clock expires, proposes to fully or conditionally approve. The EPA would simultaneously issue an interim final rule, finding that the State has corrected the deficiency. In that case, application of the offset sanction would be stayed unless and until EPA's proposed approval is reversed. Now suppose that, at month 22, EPA reverses its proposed approval. The reversal would be a proposal to disapprove the SIP in whole or in part or a final disapproval of the SIP in whole or in part. At month 22 (or, for final actions, on the action's effective date), the offset sanction reapplies. The highway sanction then applies at month 24, 6 months after the offset sanction originally applied, unless EPA determines that the State corrected the deficiency within that period.

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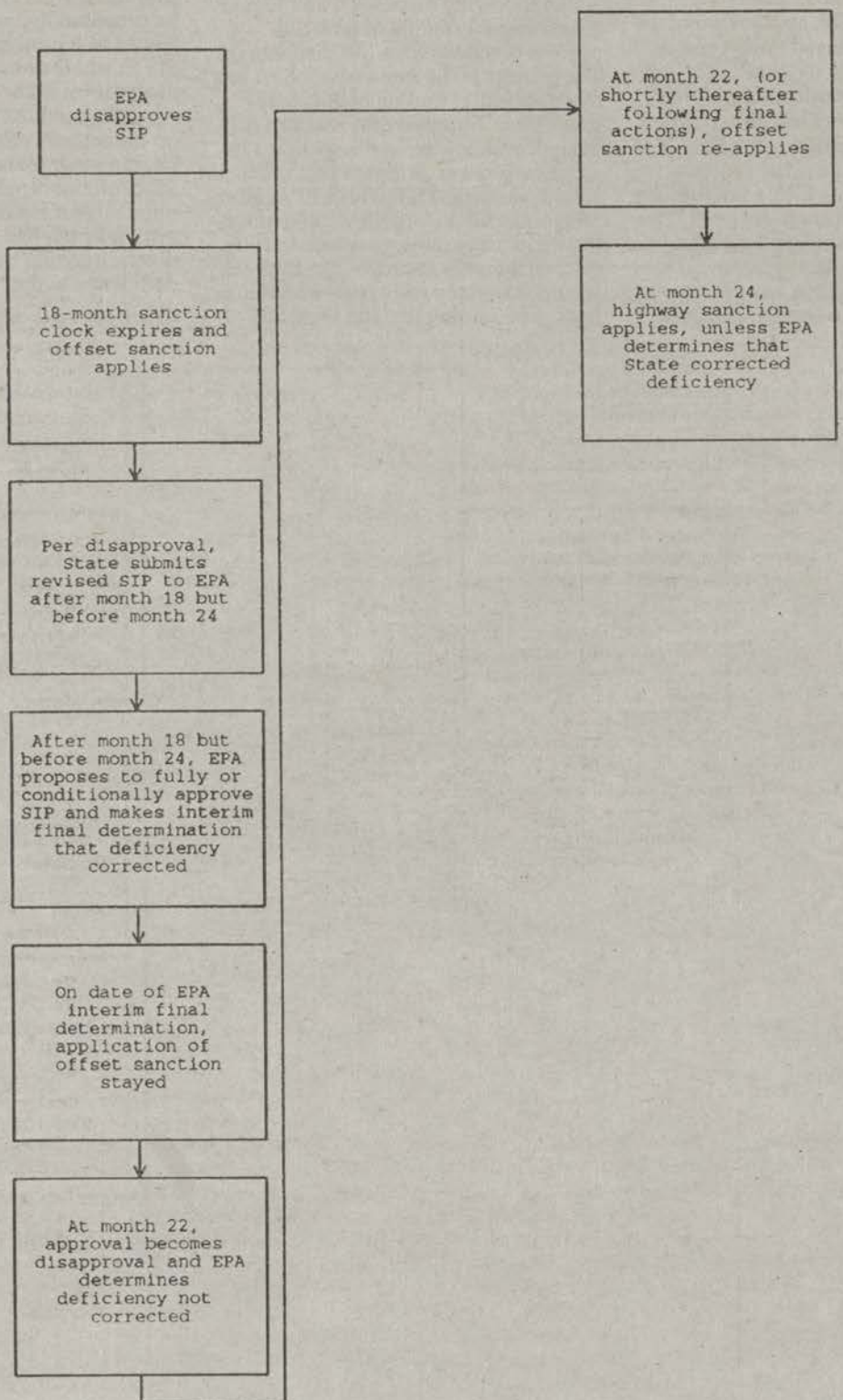
Figure 3: Case 3 for SIP Disapprovals

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Fourth, if EPA proposes (after month 18, but before the subsequent 6-month sanctions clock expires) to fully or conditionally approve a plan or proposes to find that the State is implementing its SIP, and EPA does not take action reversing such positive action until after the subsequent 6-month clock expires, application of the offset sanction is stayed and application of the highway sanction is deferred unless and until EPA's proposed positive finding is reversed. The offset sanction reapplies and the highway sanction applies on the date EPA's preliminary determination is reversed. (This scenario is provided for in the rule at §§ 52.31(d)(2)(ii), (d)(3)(ii) and (d)(4)(ii).)

The following discussion and Figure 4 provide an example of how this process functions for a SIP disapproval. The process functions in the same way for an initial finding of failure to implement. Suppose EPA makes a SIP disapproval, initiating the section 179 sanction process. Suppose that EPA, after 18 months (but before the subsequent 6-month clock expires), proposes to fully or conditionally approve the SIP. The EPA would simultaneously issue an interim final rule, finding that the State has corrected the deficiency. In that case, application of the offset sanction would be stayed and application of the highway sanction deferred at the time EPA makes its positive finding. Now suppose that, at month 26, EPA reverses its positive finding. The reversal would be a proposal to disapprove the SIP in whole or in part or a final disapproval of the SIP in whole or in part. At month 26 (or, for final actions, on the action's effective date), the offset sanction reapplies and the highway sanction applies.

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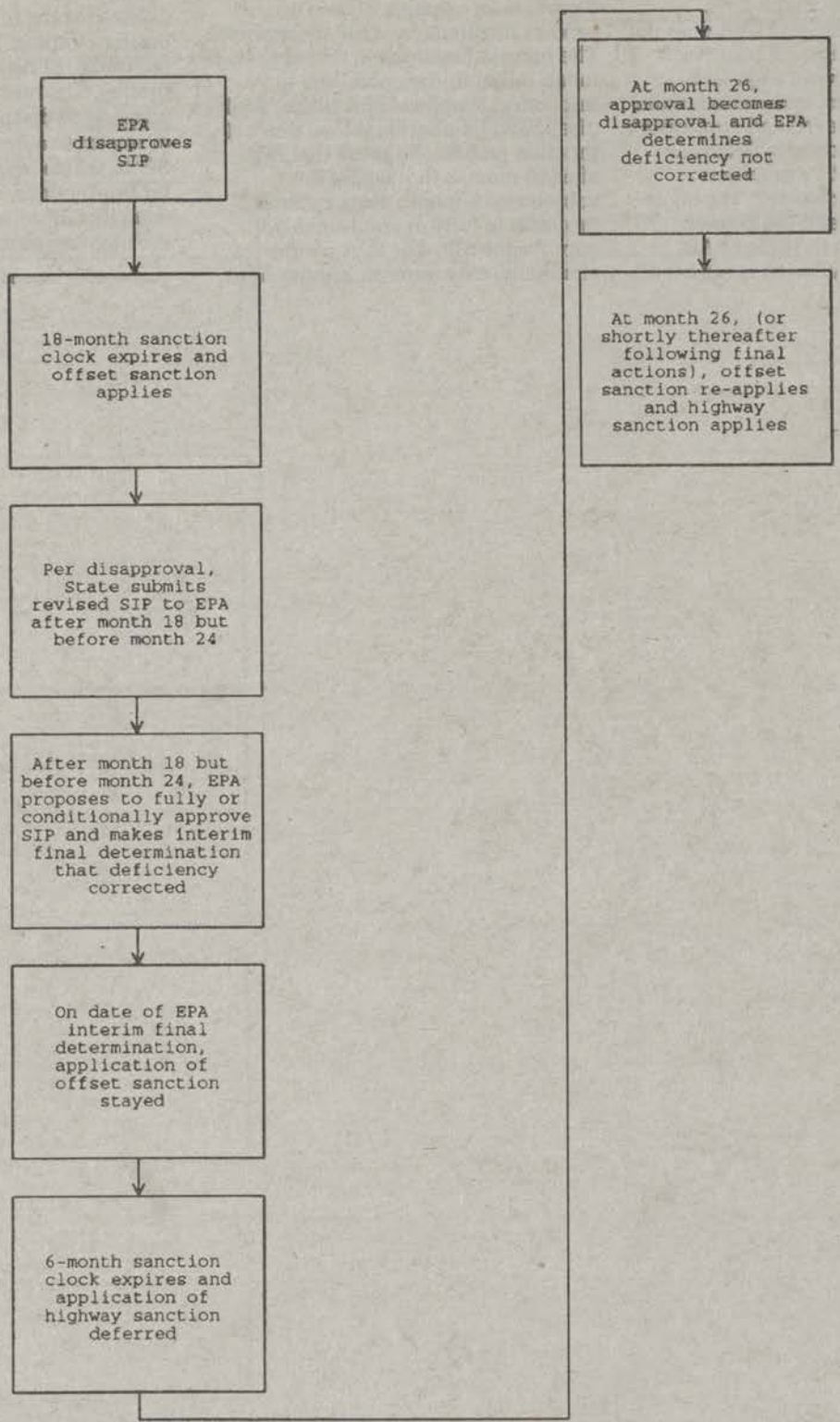
Figure 4: Case 4 for SIP Disapprovals

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Lastly, the rule also provides that, following a SIP disapproval or a finding of failure to implement, if EPA proposes after both sanctions clocks have expired to fully or conditionally approve a plan or proposes to find that a State is implementing its SIP, application of the offset and highway sanctions is stayed unless and until EPA's proposed positive finding is reversed. The offset and highway sanctions reapply on the date EPA's preliminary determination is reversed. (This scenario is provided for in the rule at § 52.31 (d)(2)(iii), (d)(3)(iii) and (d)(4)(iii).)

The following discussion and Figure 5 provide an example of how this process functions for a SIP disapproval. The process functions the same for an initial finding of failure to implement. Suppose EPA disapproves a SIP, initiating the section 179 sanction process. Suppose that the State submits a revised SIP which EPA, at 25 months, proposes to fully or conditionally approve. The EPA would simultaneously issue an interim final rule, finding that the State has corrected the deficiency. In that case, the application of both sanctions would be stayed on the date of the positive action. Now suppose that, at month 30, EPA reverses its proposed positive finding. The reversal would be a proposal to disapprove the SIP in whole or in part or a final disapproval of the SIP in whole or in part. At month 30 (or, for final actions, on the action's effective date), both sanctions reapply.

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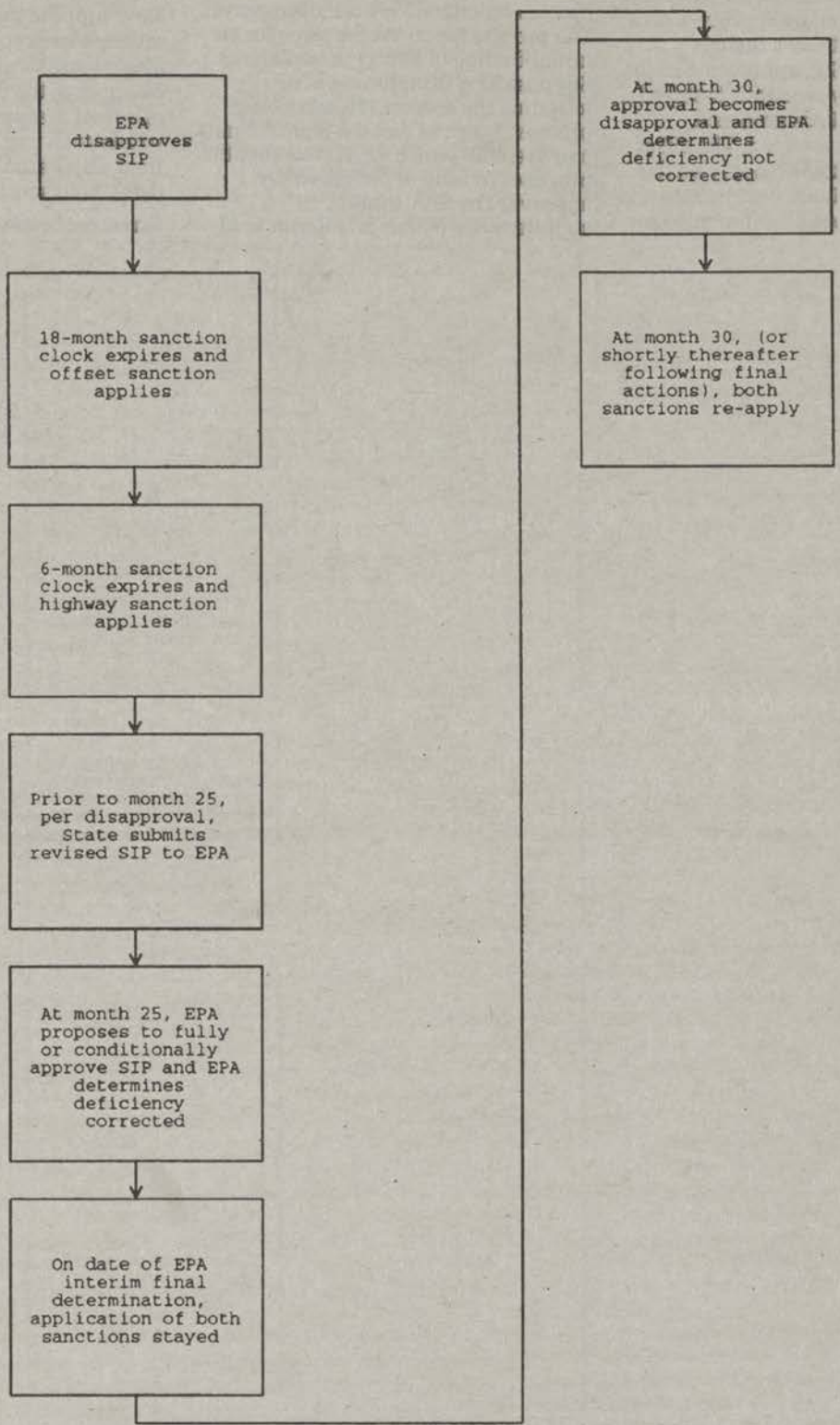
Figure 5: Case 5 for SIP Disapprovals

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In all cases following disapprovals and findings of nonimplementation, the sanctions clock stops permanently and any sanctions applied are permanently lifted only when EPA completes final notice-and-comment rulemaking action fully approving the SIP revision or finding that the State is implementing its SIP.[25]

(4) Legal Basis and Rationale for Change One. The EPA believes that its policy clarification is consistent with the statutory language of section 179 and that it is a reasonable interpretation of that language. The EPA believes this policy is consistent with the legal requirements of section 179 of the Act and section 553 of the APA. Section 179(a) of the Act requires sanctions to apply 18 months after a deficiency finding "unless such deficiency has been corrected * * *," and requires that sanctions apply "until the Administrator determines that the State has come into compliance * * *." The EPA interprets this language to require that EPA make a determination that the State has corrected the deficiency before permanently stopping the sanctions clock or lifting sanctions. In the case of a clock started by a disapproval, such a determination would be represented by a final, full approval. However, EPA does not believe that section 179(a) requires a final approval in order to defer or stay the application of sanctions, since the statutory language speaks generally in terms of "correcting" deficiencies and "determining" compliance without explicitly linking those events to final approval actions.

Regarding SIP disapprovals, EPA recognizes the first commenter's concern over timing and believes that this policy clarification eliminates the potential for sanctions applying in an area when EPA has a submittal in house for which EPA has determined that it is more likely than not that the State has corrected the deficiency that prompted the original disapproval. Extending the approach for disapprovals to findings of nonimplementation also serves to avoid applying sanctions when EPA has proposed that a State is implementing its approved SIP.

Consequently, EPA believes it is consistent with section 179 to treat proposed full approvals following disapprovals[26] as the basis for deferring or staying the application of sanctions, while not permanently stopping the sanctions clock or permanently lifting sanctions. The EPA also believes it is consistent with section 179 for proposed and final conditional approvals to be the basis for deferring and/or staying the application of sanctions.[27] The proposed full or conditional approval then forms the basis for EPA to issue an interim final determination, which EPA would publish in a separate action in the **Federal Register** contemporaneously with the proposed approval notice, that the State had corrected the deficiency and come into compliance with the requirements of the Act.[28] While this interim final determination would have the effect of deferring or staying sanctions, it would not have the final effect of either approving the submitted SIP revision, or permanently stopping a sanctions clock or permanently lifting sanctions. The interim final determination would be subject to notice and comment and would have effect only until either EPA made a final determination that the deficiency was corrected at the time of a final approval of the SIP revision, or EPA reversed its interim final determination at the time EPA reverses its proposed full or conditional approval. If an EPA proposed full approval were reversed by a proposed disapproval, the Agency would publish a separate action in the **Federal Register** withdrawing the interim final determination (that the State has corrected the deficiency) contemporaneously with the notice of the proposed disapproval. If an EPA proposed approval were reversed by a final disapproval, EPA would take final action finding that the deficiency has not been corrected in the final disapproval action. For an EPA proposed conditional approval, a reversal could occur by a proposed or final disapproval. For an EPA final conditional approval, a reversal would occur when the conditional approval converts to a disapproval through the State's failing to submit a complete revised SIP to which it committed or by EPA's disapproval of the State's revised SIP.

The EPA believes that this approach is similar to the method courts traditionally use to grant interim equitable relief. Courts may grant preliminary injunctions to parties that the court determines are likely to succeed on the merits of their case, where there is no adequate legal remedy available, and where the public interest would not be served in not granting the injunction. Such injunctions may typically last until the court has finally decided the merits of the case, either for or against the party granted the injunction. Deferring or staying the application of sanctions upon proposed approval of a SIP revision is analogous, in that an EPA proposed approval represents EPA's view that it is more likely than not that the State has corrected the disapproval deficiency and come into compliance with the requirements of the Act. Also, as SIP approval actions generally require notice-and-comment rulemaking before they can become final, if a sanctions clock is due to expire after proposed approval but before the Agency can practicably fulfill its notice and comment duties and grant final approval, there is no other "remedy" available to relieve the State from the punishment of sanctions, even though it is probable that the State has corrected the deficiency.

Moreover, EPA does not believe, following proposed approvals, that it would be in the public interest for sanctions to remain in effect, as at that point the Agency believes that there is nothing further that the State need do to come into compliance, and thus there is no further need for the deterrent effect of sanctions. The EPA also believes that in these situations it would be especially unfair to States to begin the application of sanctions where the only reason the sanctions clock has not permanently stopped is that the Agency cannot complete its rulemaking process to finally approve the SIP before sanctions apply. Finally, EPA notes that like the judicial preliminary injunction model, this approach provides that upon reversal of EPA's preliminary assessment that the SIP revision is approvable, and that, therefore, the deficiency has not been corrected, sanctions would be in effect as if the interim final determination that the State had corrected the deficiency had never been made.

The EPA also believes that this approach is consistent with the requirements of section 553 of the APA.

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[25] These actions permanently stop the sanctions clock and permanently remove sanctions because such actions represent EPA's final determination that the State has met the requirements of the Act and thus has corrected the deficiency that initiated the sanctions process.

[26] The following discussion on EPA's legal rationale and basis for staying and deferring sanctions only explicitly addresses SIP disapprovals but applies equally to findings of nonimplementation.

[27] In NRDC v. EPA, No. 92-1535, slip. op. at 18 (D.C. Cir. May 6, 1994), the Court struck down EPA's policy of conditionally approving committal SIP's (i.e., SIP's consisting solely of a commitment). However, the Court provided that "the conditional approval mechanism was intended to provide EPA with an alternative to disapproving substantive, but not entirely satisfactory, SIP's * * *." The EPA will issue conditional approvals consistent with that Court's opinion.

[28] Since a final conditional approval has the effect of continuing the staying and/or deferring of sanctions, upon final conditional approval, EPA would not publish a second interim final determination that the State has corrected the deficiency (see footnote 18).

Generally, under the APA, agency rulemaking affecting the rights of individuals must comply with certain minimum procedural requirements, including publishing a notice of proposed rulemaking in the **Federal Register** and providing an opportunity for the public to submit written comments on the proposal, before the rulemaking can have final effect. The EPA will not be providing an opportunity for public comment before those deferrals or stays are effective. Consequently, EPA's approach may appear to conflict with the requirements of the APA. However, EPA will provide an opportunity to comment on the proposed approval that was the basis for the interim final decision and will provide an opportunity, after the fact, for the public to comment on the interim final decision. Thus, an opportunity for comment will be provided before any sanctions clock is permanently stopped or any already applied sanctions are permanently lifted. In the context of the SIP approval rulemaking, and with respect to the interim final rule, the public would have an opportunity to comment on the appropriateness of EPA's interim determination that the State had corrected the deficiency and on whether the State should remain subject to sanctions, even though the deferral or stay is already effective.

The basis for allowing such an interim final action stems from section 553(b)(B) of the APA which provides that the notice and opportunity for comment requirements do not apply when the Agency finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." In the case of sanctions, EPA believes it would be both impracticable and contrary to the public interest to have to propose and provide an opportunity to comment before any relief is provided from the effect of sanctions. First, until EPA proposes approval of a SIP revision, the Agency's first step in determining whether a State's SIP submittal meets the requirements of the Act, EPA is not in a position to propose that the State has corrected the deficiency; thus, there is no point in the process before proposed approval at which EPA could propose that the State has corrected the deficiency and provide an opportunity for meaningful public comment on the issue. Second, as discussed above, EPA believes it would be unfair to the State and its citizens, and thus not in the public interest, for sanctions to remain in effect following an EPA proposed approval, since at that point the Agency has completed a thorough evaluation of the State's SIP revision and publicly stated its belief that the submittal is approvable and that the State has corrected the deficiency, but due to the procedural requirements of the Act the Agency has not yet been able to issue a final approval. The EPA believes sanctions coming into effect following proposed approvals would unnecessarily risk potential dislocation in government programs and the marketplace. The EPA also believes that the risk of an inappropriate deferral or stay would be comparatively small, given the limited scope and duration deferrals and stays would have and given the rule's mechanism for making sanctions effective upon reversal of its initial determination that the State had corrected the deficiency. Consequently, EPA believes that the "good cause" exception under the APA allows the Agency to dispense with notice and comment procedures before deferrals and stays of sanctions become effective, and that it is thus appropriate to respond to the commenters with the approach adopted in today's rule.

(5) Responses to Other Comments. The EPA does not support the alternative proposed by the commenters that EPA temporarily or permanently stop the sanction clocks started by disapprovals upon EPA receipt of a submittal that the State believes corrects the deficiency.

The EPA cannot determine whether the State has corrected the deficiency until it reviews the plan for adequacy. If the sanction clock were temporarily or permanently stopped upon mere submission of a plan following any section 179(a) disapproval (or finding of nonimplementation) and not started again until subsequent disapproval, mandatory sanctions would then take that much longer to have the effect of encouraging State compliance and protecting air quality in the area. Temporarily or permanently stopping the clock upon mere submission of a plan could result in abuse of the system by States knowingly submitting SIP's that EPA cannot approve in order to defer the application of sanctions. By allowing such abuses, such an approach would also be unfair to States which, despite a good faith effort at developing a corrective rule, are unable to avert sanctions following disapproval. In sum, under the revised policy, the underlying requirement for stopping the sanction clock is maintained: EPA must take final action to fully approve a submitted SIP revision or find that a State is implementing its SIP in order to permanently stop the sanctions clock and permanently lift any sanctions. As discussed above, EPA will defer and/or stay the application of sanctions when it proposes a positive finding that forms the basis for EPA to determine through an interim final action that the deficiency has been corrected; but in these cases EPA will not temporarily or permanently stop the underlying clock.

The EPA also believes that its interpretation is legally supported under the Act. Generally, section 179 states that, "* * * unless such deficiency has been corrected within 18 months after the finding, disapproval, or determination * * *" one of the sanctions shall apply, as selected by the Administrator. Section 110(c)(1) of the Act requires EPA to promulgate a FIP at any time within 2 years after the Administrator finds that a State has not made a required submission or has made an incomplete submission, or disapproves a plan submission, "unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan."

The running of the sanctions clock is tied to the particular deficiency at issue. For example, if the clock was triggered by a finding of failure to submit or a finding of incompleteness, the clock will stop if EPA determines that the State submits a complete plan; it is not also necessary for the plan to be actually approved to stop the clock. If the complete submission is later disapproved, then a new 18-month clock will begin to run, as provided in section 179(a), and will continue to run until that deficiency is corrected with an EPA approved plan. For the FIP clock, in addition to the deficiency being corrected, section 110(c)(1) includes an additional criterion—EPA SIP approval—that must be satisfied for EPA not to have to promulgate a FIP within 2 years of a finding of nonsubmittal or incompleteness. The explicit reference to an approval as an added prerequisite—beyond "correcting the deficiency"— makes clear that, in the context of failures to submit or submission of incomplete plans, plan approval is quite distinct from "correcting the deficiency." Therefore, the Administrator's approval is distinct from "correcting the deficiency" for failure to submit and incompleteness. Therefore, the fact that the "SIP approval" language is redundant for disapprovals, where SIP approval is part of correcting the deficiency, does not render that clause superfluous.

This interpretation of the section 179 sanction clock does not "read out" the section 110(c) requirement, but rather merely illustrates that following disapprovals what is necessary to stop

the sanction and FIP clocks is the same: EPA approval of the SIP. (See EPA's July 9, 1992 SIP processing guidance, page 10.) However, as discussed above, this is not the case for sanction clocks started by a finding of failure to submit or a finding of incompleteness. There, the State can correct the deficiency merely by submitting a SIP EPA finds complete. This would stop the sanctions clock. In these situations, the additional step of EPA approval is required to stop the FIP clock, under the plain language of section 110(c)(1).

Therefore, EPA's interpretation of section 179(a) does not render the provisions of section 110(c)(1)(B) inconsistent, meaningless or superfluous. The *Boise Cascade* case cited by the commenter addressed a situation in which one word, "promulgation," was argued by petitioners to have the same meaning as another, "approval" (942 F.2d at 1342). The court rejected that argument because failing to distinguish between the terms would have resulted either in a conflict between two subsections of the Clean Water Act or made superfluous the use of "approval" in another subsection (Id). Here, EPA's interpretation of what is required to correct a deficiency under section 179(a) does not conflict with the requirement for EPA approval to stop a FIP clock. It logically follows that approval is implicitly required to correct a deficiency based on a disapproval, since a State cannot be considered to have remedied the underlying flaw that led to a disapproval until EPA has determined that the State's attempt to do so is approvable.[29] The explicit language in section 110(c)(1)(B) is necessary because FIP clocks also may be started by a finding of failure to submit or SIP disapproval. Congress was explicitly providing that in both these instances EPA approval is required to stop a FIP clock. Therefore, the reference in section 110(c) to the need for EPA approval still has meaning when the initial failure was a failure to submit or an incompleteness finding. Thus, EPA's interpretation does not render superfluous the explicit language in section 110(c)(1)(B).

Moreover, EPA's interpretation does not ignore or "read out" of the statute section 110(c)(1)(B) (*NRDC* v. *USEPA*, 822 F.2d at 113). That case addressed a petitioner's attempt to ignore a specific condition of the Clean Water Act's applicability provision, which the court viewed as an unacceptable method of construing statutes (Id). Here, rather than disregarding the requirement that EPA approval is necessary to stop a FIP clock, EPA is interpreting section 179(a) to implicitly require that same element to be satisfied before a sanctions clock started for a disapproval can be stopped. This in no way ignores the section 110(c)(1)(B) language for purposes of the FIP clock, nor represents an attempt to interpret the Act such that the language of section 110(c)(1)(B) does not have full effect. As stated above, the reference to EPA approval in that section still has meaning where the clock was started by a finding of failure to submit or incompleteness.

(5) *Additional Comments Regarding the Sanctions Clock.*

(a) *Comments.* Another commenter believes that the final rule should provide for resetting the sanctions clock whenever a State that had failed to submit a timely SIP submits one, even if the SIP is later found to be incomplete. The commenter notes that section 179 provides for an 18-month period following one of four different types of findings of inadequate State action before sanctions can be imposed. The commenter argues that EPA illegally shortens this period by combining into one, two types of inadequate action under the same 18-month period, and that the final rule should provide for separate clocks for each type of inadequate action.

Another commenter is concerned that States may be tempted to view the 18-month sanctions clock as additional time in which to meet a deadline. The commenter believes that Congress did not intend that States that failed to submit a timely SIP and later submitted an inadequate SIP would have more time before facing sanctions than States that submitted a complete but unapprovable SIP on time. While the commenter agrees with EPA's policy that incomplete submittals cannot temporarily stop the sanctions clock, the commenter believes the overall policy rewards delay in completing programs. The commenter believes that the final rule should state that only EPA approval of a final rule stops the clock.

(b) *Responses.* As noted above, section 179 indicates that sanctions apply within certain timeframes, unless EPA determines that the deficiency that prompted the finding starting the sanctions clock has been corrected within those timeframes. Therefore, EPA believes the Act requires that sanction clocks stop for findings of failure to submit and findings of incompleteness when EPA finds a subsequently submitted SIP complete (i.e., finds that the deficiency has been corrected).

The EPA disagrees that a clock started by a finding of failure to submit should stop based on a mere submittal that may or may not be complete. The Act provides under section 110(k)(1)(C) that where the Administrator determines that a plan is incomplete the State is treated as not having made the submission. Based on this, EPA believes that an affirmative finding that a SIP is complete is necessary to cure a nonsubmittal or incompleteness deficiency and stop sanction clocks initiated by such findings.[30] This interpretation is further supported by the fact that a finding of failure to submit and incompleteness are provided for under the same provision of sections 179(a)(1) and 179(a)(3)(A).

On the other hand, EPA does not believe that it is appropriate to allow only EPA approval to permanently stop the sanction clock for all types of findings.[31] It is conceivable that a State could abuse the system under the process established in the final rule by submitting a complete but inadequate SIP at 17 months that stops a sanctions clock that started based on a finding of failure to submit or a finding of incompleteness. Such an area could face sanctions later than the State that submitted a timely, complete but unapprovable SIP. However, as discussed above, EPA believes the reference to "such deficiency" immediately following the list of the types of deficiency findings in section 179(a) indicates that sanctions clocks will stop if and when the State corrects the specific deficiency that prompted the finding. Consequently, the running and stopping of the clock is tied to the particular deficiency at issue, and EPA believes that it lacks the statutory

[29] As discussed above, EPA believes it is appropriate at the point of proposed approval to contemporaneously issue an interim final determination that the State has corrected the deficiency for purposes of deferring or staying the application of any sanctions that are due. Again, this interim final determination would be subject to the condition that EPA grant final approval to the SIP, and would not have any final effect on the actual approval action. If the subsequent condition is not met (i.e., if EPA's proposed approval is reversed by a proposed or final disapproval), from that point on the interim final determination would have no effect and any sanctions required to be applied would be applied.

[30] As noted above in this section, this change is reflected in the rule and is discussed in section II.C.4. of this document.

[31] As noted above, the commenter indicates that it agrees with EPA's proposed policy that incomplete submittals cannot temporarily stop the sanctions clock. The EPA's proposed policy did not state that incomplete submittals cannot *temporarily stop* the sanctions clock. Rather, EPA's proposed policy stated that incomplete submittals cannot permanently stop the sanctions clock initiated by a finding of failure to submit or incompleteness. Thus, in responding to the comment permanently stop has been substituted for temporarily stop.

authority to apply mandatory sanctions under section 179 upon those States that initially failed to make a submission (through failure to submit or by virtue of an incomplete submission) but which have subsequently submitted a complete plan. The submission of a complete plan is sufficient to stop a clock started for a failure to submit any or a complete plan because at that point the State has corrected the specific earlier deficiency of not having submitted a complete plan. Following this correction, the plain language of section 179 does not allow application of mandatory sanctions due to the original deficiency, but if the complete submission is later disapproved, a new sanction clock will begin to run and will continue to run until that specific deficiency is corrected.[32] The EPA believes that overall its policy is consistent with the language of section 179 and rational in that it recognizes that what the State must do to correct a deficiency relates directly to the nature of the finding, and that overall this policy will encourage compliance with Act requirements.

Finally, the Act contains due dates by which the State is required to submit certain SIP's. The EPA does not believe that Congress established the 18-month period before mandatory sanctions must apply as a grace period in which States have a legal right under section 179 to submit SIP's after the relevant statutory due date. In fact, EPA interprets section 110(m) of the Act as providing EPA with the authority to "* * * apply any of the sanctions listed in section 179(b) at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under * * * section 179(a) * * *." Therefore, EPA is not precluded from taking more aggressive action than required under section 179 when States fail to correct deficient plans.

*4. Other Areas of Comment*

This section addresses the remaining areas of the proposal where comment was received.

a. *Lack of Good Faith Determination.* Under section 179(a), both the offset and highway sanctions shall apply after 18 months if the Administrator finds a lack of good faith on the part of the State. In the proposal at page 51274, EPA indicated that any finding of a lack of good faith EPA makes under section 179(a) will be subject to notice-and-comment rulemaking.

One commenter believes that the final rule should define a "lack of good faith" and require application of both sanctions as a default where it exists. The commenter believes that some situations may require fact specific judgment, while others are so extreme that they presumptively prove the State has decided not to make a good faith effort at complying. The commenter believes that EPA need not undertake notice-and-comment rulemaking with respect to findings of a lack of good faith. Another commenter believes that the phrase "if the Administrator finds a lack of good faith on the part of the State" is subjective and ambiguous and needs defining.

In response to the comments, EPA still believes findings of a lack of good faith under section 179(a) must be subject to notice-and-comment since it is a discretionary action which requires exercise of a substantial degree of judgment on EPA's part. The public should have an opportunity to comment on the basis for these actions. Further, EPA does not yet have a policy on how to further define the Act's language, or when and where it plans to make findings of a lack of good faith other than the case-by-case approach described above. The notice-and-comment rulemaking will provide an opportunity for the public to comment on EPA's interpretation of a lack of good faith in each case-specific circumstance.

b. *Sanction Timing.* The proposal at page 51272 indicated that since section 179(a) provides for automatic sanction application once EPA has made the selection, under this sanction sequence rule sanctions will apply automatically in the order prescribed herein in all instances in which sanctions are applied following findings under section 179(a) (1)–(4) that EPA has already made or that EPA will make in the future, except when EPA takes a separate action to select a different sequence of sanction application. However, the proposal indicated that where the sanction clock expires for any findings before this action is final and effective and EPA has not taken independent sanction selection action, EPA interprets section 179(a) to provide that sanctions shall not apply until EPA makes the sanction selection through notice-and-comment rulemaking, such as this action.

At page 51272 of the proposal EPA also indicated that EPA intends to notify States of the automatic sanctions by letter and publish a document in the **Federal Register** in which EPA amends the language of the rule to indicate areas subject to the applicable sanctions. The proposal provided that if removal of sanctions is warranted, EPA would notify the State that sanctions are being removed and amend the rule to reflect that.

One commenter believes that EPA's interpretation of section 179 is incorrect and that section 179 unambiguously requires sanction application within 18 months of a finding. The commenter believes that Congress did not condition EPA's mandatory sanction application duty on completion of notice-and-comment rulemaking.

The plain reading of section 179(a) is that sanctions, "as selected by the Administrator," apply within certain prescribed timeframes. The section does not provide any guidance to EPA on sanction application sequence. Given this wide discretion, EPA believes that it is necessary for sanction selection to be subject to notice-and-comment in order to provide for public comment. The EPA interprets the phrase "as selected by the Administrator" as words of condition that must be met before mandatory sanctions apply. Indeed, EPA is undertaking this rulemaking to satisfy the conditional duty so that sanctions may apply automatically when sanctions clocks expire.

The EPA is also conducting this rulemaking to eliminate the future need (except to reverse the sanction sequence) for individual rulemakings for every finding with respect to part D requirements. The EPA believes in the long run this action will facilitate smooth application of sanctions to encourage State compliance and protect air quality.

c. *Notice and Comment for Nonsubmittal and Incompleteness Findings.* In the proposal at page 51272, EPA's view was that notice-and-comment is not required for findings of failure to submit because of insufficient time provided by the statute. Since EPA has less than 60 days to determine whether a State's submittal is complete, 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. Additionally, EPA argued that even if EPA's findings of failure to submit were subject to APA rulemaking procedures, EPA believed that the good cause exception to the rulemaking requirement applies (APA section 553(b)(B)). Section 553(b)(B)of the APA provides that EPA need not provide notice and an opportunity for comment if EPA determines that notice and comment are "impracticable,

[32] Furthermore, it appears that the approach articulated by this commenter (i.e., that sanctions clocks and FIP clocks are both stopped by EPA approval of a revised SIP) would present the problems recognized in reading out of section 110(c)(1) the clause "the Administrator approves the plan or plan revision" (*Boise Cascade*, 942 F.2d at 1432, and *NRDC* v. *EPA*, 822 F.2d at 113).

unnecessary, or contrary to the public interest." The EPA argued that notice and comment for findings of failure to submit does not require any judgment on the part of EPA and, therefore, is unnecessary.

One commenter states that under the APA, burdens such as sanctions cannot be imposed without notice-and-comment. The commenter argues that EPA provides no defense of its denial of public comment for findings of incompleteness and cannot defend such denial for findings of nonsubmittal and incompleteness. The commenter further argues the judgment of whether a SIP meets the SIP completeness criteria is often debatable and discretionary. Therefore, the commenter argues, the public should be able to comment.

Another commenter believes that EPA's proposal contradicts the spirit and letter of the notice-and-comment provisions in the Act. The commenter argues the proposal is contradictory on when it allows for public comment in some instances but not others.

In response to the comments, EPA maintains that notice and comment is not necessary for findings of failure to submit and incompleteness. The 60 days the Act provides EPA to determine whether a State submittal is complete does not provide sufficient time to conduct notice-and-comment rulemaking prior to making findings of failure to submit or findings of incompleteness. The EPA continues to believe that the impossibility of conducting notice-and-comment rulemaking within the 60 days provided for completeness decisions is itself compelling evidence that Congress did not intend such rulemaking. Additionally, EPA does not believe that notice and comment are necessary for findings of incompleteness because section 110(k)(1)(B) does not specifically require it. By enacting section 110(k)(1) on completeness, Congress was codifying an EPA practice created in late 1989 in which EPA did not provide notice-and-comment rulemaking before making incompleteness findings.[33] By codifying that practice and by not specifically requiring anything more than the process EPA already established, Congress appears to have adopted EPA's established process of making completeness determinations by letter. Moreover, EPA does not believe that the completeness determination is highly discretionary, but instead is a straightforward exercise to assure a State's submittal has all the basic elements to warrant further review for overall adequacy.

Regarding the APA, EPA continues to believe that even if EPA's findings of failure to submit and incompleteness were subject to rulemaking procedures under the APA, the good cause exception applies to such findings for the reasons discussed above. It would not be practicable to subject every completeness review to notice and comment because of the limited time afforded by the statute. It would also not be in the public's interest because it would impose a tremendous burden on the Agency and divert resources from more important substantive SIP reviews.

Regarding the consistency comment, EPA believes that it is adhering to the notice-and-comment provisions of the amended Act and the APA. Where it is appropriate, because the determination requires EPA judgment, EPA provides for notice and comment (i.e., for SIP disapprovals or findings of nonimplementation). Additionally, as EPA has done via this action, when EPA makes a sanction selection notice and comment are also provided. On the other hand, as discussed above, in other cases sufficient time does not exist to provide for notice and comment and the determinations themselves require little, if any, judgment. Finally, as discussed in section II.C.3., the final rule does not cover findings of substantial inadequacy under section 110(k)(5) for part D SIP's (so-called SIP calls), which were covered by the proposed rule, because of concerns about adequate notice and comment before sanctions are applied for State failure to respond to a SIP call. The EPA intends to develop an alternative approach for applying mandatory sanctions for State failure to respond to SIP calls that provides for notice and comment.

d. *PM–10 Waivers.* The proposal did not address the PM–10 waiver provisions in section 188(f) of the Act. The commenter expresses a frustration with the definition of PM–10 "significance" and argues that in the West, PM–10 levels above the standard are caused predominately by fugitive dust and mobile sources. Therefore, the commenter believes, applying 2-to-1 offsets to industrial sources will have a negligible effect on PM–10 24-hour concentrations.

A July 1992 draft addendum to the General Preamble (57 FR 31477, July 16, 1992) addresses several waiver policy issues, including significance levels. The EPA believes the comment period for that policy, rather than this action selecting sanctions, is the appropriate forum for comments on that issue. The EPA recognizes that in some nonattainment areas industrial sources may be less significant contributors. In those cases, EPA may decide to apply the highway sanction first, which this rule provides flexibility to do.

*C. Summary of Changes in Rule*

1. Section 52.31(a)—Purpose

Section 52.31(a) sets forth the purpose of this rulemaking, which is to establish the sequence of sanctions required to apply under section 179(a). The substance of this provision was not changed from the proposed rule.

2. Section 52.31(b)—Definitions

Section 52.31(b) sets forth the definitions applicable under 40 CFR 52.31. The definitions of "Act" and "1990 Amendments" are not substantively changed. However, the citations for these two definitions were inadvertently switched and they now correctly provide that the Act is located at 42 U.S.C. et seq. and the 1990 Amendments were set forth in Public Law 101–549.

In addition, several definitions were added. Since the regulation provides that the offset sanction only applies to the pollutant(s) that the finding concerns and its precursors, EPA has added a definition of "precursors." The EPA has also added a definition of "ozone precursors" which specifically identifies the two ozone precursors—VOC and $NO_x$.

The EPA has added a new definition for "affected area." This term, while used in the proposed rule (e.g., the tables), was not previously defined. Furthermore, its usage in the final rule has been expanded; in many places the word "area" has now been replaced by "affected area." The definition provides that an "affected area" is the geographic area subject to or covered by the Act requirement that is the subject of the finding and either, for purposes of the offset and highway sanctions, is or is within an area designated nonattainment area pursuant to 42 U.S.C. 7407(d) or, for purposes of the offset sanction, is or is within an area otherwise subject to the emission offset requirements of 42 U.S.C. 7503. As used in this rule, in conjunction with § 52.31(e) (1) and (2), the affected area is the area potentially subject to a

[33] Note that in promulgating the completeness criteria, EPA noted that the purpose of the completeness procedure is to "keep incomplete packages out of the more extensive review system (i.e., rulemaking for approval), thereby saving both EPA and the State valuable time" (54 FR 2138, 2139 (January 19, 1989)). Therefore, requiring rulemaking action to determine whether a SIP submittal is complete would defeat the purpose of the completeness criteria, which is to allow for a quick rejection of those submittals that are "essentially unreviewable" (*Id*).

sanction based on a finding. The new definition clarifies that the sanction applies to the geographic area subject to or covered by the requirement at issue in the finding. This will usually be the entire designated area, but in some instances may be a portion of a designated area. This point is made through the first portion of the definition. Moreover, since the affected area is the area in which a sanction applies, it was necessary to limit the definition to those areas that could be subject to a sanction. Therefore, the second portion of the definition restricts the definition of "affected area" by incorporating the geographic limits of the highway and offset sanctions. First, the highway sanction, as applied under section 179(a), is limited to nonattainment areas, since section 179(b)(1) provides that the highway sanction may be "applicable to a nonattainment area."[34] Second, by its terms, the offset sanction has effect only in those areas in which the offset requirements of section 173 are required to apply. (See 59 FR 1480 (January 11, 1994) for a further discussion of the geographic applicability of section 179(b) sanctions.) This includes all nonattainment areas. In addition, some attainment and unclassified areas (e.g., those located in the NOTR could be subject to the offset sanction, since those areas may be subject to the offset requirements of section 173, even though they are not designated nonattainment (see section 184, for example). Therefore, the second clause of the definition limits affected areas to nonattainment areas (which would be subject to both the highway and offset sanction) and areas otherwise subject to the emission offset requirements of section 173 (which would be subject to the offset sanctions).

Three examples illustrate how this definition applies. One, if EPA finds that a State fails to submit a PM–10 plan for a moderate PM–10 nonattainment area pursuant to section 189(a) and the State does not correct the deficiency within 18 months, then, pursuant to this rule, the offset sanction shall apply in the PM–10 nonattainment area whose boundaries are described in 40 CFR part 81. If 6 months later the deficiency remains uncorrected, then the highway sanction applies in the nonattainment area as well. In both cases the sanction applies only in the nonattainment area because that is the geographic area covered by the Act requirement.

[34] Section 171(2) defines "nonattainment area" as "an area which is designated 'nonattainment' with respect to (an air) pollutant within the meaning of section 107(d)."

Two, if EPA finds a State fails to submit a required SIP revision under the Act for a requirement that applies to only a portion of an area, then the sanctions apply to the portion of the area subject to the requirement and not the whole area. For example, the enhanced inspection and maintenance plan requirement for serious, severe, and extreme nonattainment areas applies only to "each urbanized area (in the nonattainment area) as defined by the Bureau of the Census, with a 1980 population of 200,000 or more" (see section 182(c)(3)(A)). Section 184 provides that for all areas within the NOTR, this requirement will apply to urbanized areas with a population in excess of 100,000. Therefore, this requirement could apply to a smaller area within a designated nonattainment, attainment or unclassified area. If the State fails to adopt the program for such an area, the section 179 sanctions would apply only to that smaller area.

Finally, if EPA finds that a State within the NOTR fails to submit a reasonably available control technology SIP for VOC required pursuant to section 184(b)(1)(B) with respect to all the sources in the State subject to this requirement, and the State does not correct the deficiency within 18 months, then, pursuant to this rule, the offset sanction would apply in the entire State. If 6 months later the deficiency remained uncorrected, then the highway sanction would apply to all of the nonattainment areas in the State. If there were no designated nonattainment areas within the State, the highway sanction would not apply in that State.

The remaining definitions remain substantively unchanged from those in the proposed rule.

3. Section 52.31(c)—Applicability

Section 52.31(c) establishes the applicability of the final rule. The portions of § 52.31(c) setting forth the findings that trigger the sanctions clock remain unchanged as these portions were taken directly from sections 179(a)(1)–(4). Generally, these findings are that a State has failed to submit a required SIP or SIP element, has submitted a SIP or SIP element that does not meet EPA's completeness criteria, has submitted a SIP that is not approvable, or that the State is failing to implement an approved SIP.

The portions of § 52.31(c) indicating the SIP requirements to which this rule applies have been modified. The proposal indicated the rule covers 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 section 110(k)(5). This section of the final rule has been modified to cover only part D SIP and SIP revisions and not calls for part D SIP's or SIP revisions under section 110(k)(5). The final rule does not cover part D SIP calls because of concerns about applying sanctions for State failures to respond to such SIP calls following EPA nonsubmittal findings without opportunity for notice and comment. SIP calls are currently not subject to notice-and-comment. The public and affected sources must be given notice and opportunity to comment before SIP calls can have binding effect as a result of a section 179(a) finding that a State has failed to submit a SIP in response to a SIP call. Thus, if this rule were to apply to State failures to respond to SIP calls, mandatory sanctions could apply without an opportunity for such comment before new obligations become binding against affected sources. This would be inconsistent with the APA requirements of section 553. Therefore, as discussed in section II.C.3., the final rule does not cover part D SIP calls. The EPA will develop another approach to address SIP calls, providing an opportunity for notice and comment before mandatory sanctions apply for a State failure to respond to a SIP call.

4. Section 52.31(d)—Sanction Application Sequencing

Section 52.31(d)(1) is the heart of this rule in that it establishes the order in which the automatic sanctions under section 179(a) shall apply. Several clarifications have been made to the section.

One, this provision now requires affirmative EPA action to stop sanction clocks and lift sanctions following section 179(a) findings, including nonsubmittal and incompleteness findings. The EPA's proposed and final sanction clock policy provides that, following findings of nonsubmittal and incompleteness, sanction clocks are permanently stopped (and any sanctions applied are permanently lifted) when EPA finds the plan complete. Section 110(k)(1)(B) provides that a submittal is deemed complete if a completeness finding is not made by EPA within 6 months of EPA's receipt of the plan. Under this clarification to § 52.31(d), a SIP becoming complete by operation of law will not be sufficient to stop sanction clocks or for an area to avoid sanctions. The EPA will need to affirmatively determine that the SIP is complete in order for the sanction clock to stop and any sanctions to be lifted.

This policy clarification will henceforth govern what is required to

stop sanctions clocks and lift sanctions following findings of nonsubmittal and incompleteness, and the other section 179 findings. Prior to this policy clarification, in certain cases EPA did stop sanction clocks started by EPA findings of failure to submit or incompleteness by SIP submittals being deemed complete "by operation of law." The EPA believes that this approach was consistent with EPA guidance at the time and that it is appropriate to grandfather these areas under EPA's grandfathering guidance.

The EPA believes that after consideration of its grandfathering policy for SIP requirements[35] it is permissible to grandfather these cases from this policy clarification. The EPA's general grandfathering guidance provides that SIP revisions will remain subject to the requirements in effect on the date that the State adopts the SIP revision, provided a complete, fully adopted SIP revision is submitted promptly, generally within 60 days of the adoption. Since the policy clarification is effective by this action and all of the SIP submittals in question were adopted more than 60 days prior to September 6, 1994, under this general grandfathering, these cases are grandfathered. However, the guidance includes several exceptions to the general guidance which must be addressed before an action is considered by EPA to be grandfathered.

The first exception concerns the intent of the policy not to grandfather SIP's submitted hurriedly to avoid new requirements. In the cases at issue, such action has not occurred on the part of the State since the States have received no early, formal notification that the sanction clock policy is being clarified in the manner it is today.

The second exception to general guidance on grandfathering concerns situations where a court ruling has explicitly changed a current Federal requirement or has convinced EPA that a previous requirement is no longer supportable. Here no such court ruling is at issue so no exception should be made in this case.

The third exception is that the Administrator may determine that grandfathering is not appropriate under a new policy. In this case, the Administrator is determining that grandfathering is appropriate.

The fourth exception indicates that grandfathering is not appropriate if it would have an imminent and substantial adverse environmental effect or could permanently foreclose use of part D provisions such as sanctions. The EPA does not believe that grandfathering these areas from this policy clarification will have an imminent and substantial environmental impact given the limited number of areas and given that the States' submittals must be adequate to attain and maintain the relevant NAAQS before EPA can approve them. In addition, this grandfathering does not permanently foreclose the application of sanctions in these areas should EPA, through rulemaking, find the SIP submittals inadequate to attain and maintain the NAAQS and disapprove them.

The fifth exception provides that action on a SIP revision which comports with the revised requirements but not the original requirements may be based on the revised requirements. In this instance, this is indeed the case; conceivably, one or more of those SIP's deemed complete by operation of law may have lacked one or more of the elements needed for EPA to find a plan affirmatively complete. Nonetheless, EPA cannot fully approve a plan if any of the required completeness elements are lacking. For example, if a SIP submittal lacks compliance/enforcement strategies, one of technical elements required for completeness, then EPA could not fully approve the plan. Therefore, while EPA is grandfathering these SIP submittals from completeness, EPA is not grandfathering these areas from having adequate SIP's to attain and maintain the standards.

The sixth exception raises a concern as to whether grandfathering the SIP from the requirements in question would render the SIP as a whole substantially inadequate. Grandfathering these SIP submittals from this policy does not raise direct concern that doing so might render the SIP's substantially inadequate since the completeness review is not a review intended to pass judgement on the adequacy of SIP's. Rather, it is intended as a straightforward exercise to determine whether the SIP's contain all the technical and administrative elements to warrant further review. As discussed above, if any of these SIP submittals deemed complete by operation of law lack any such elements, then such deficiency will be reflected in EPA's determination as to the SIP's adequacy to attain and maintain the air quality standards.

The seventh exception concerns certain classes of changes which are only indirectly related to attainment and maintenance of the air quality standards. Completeness reviews are only indirectly related to attainment and maintenance of the standards in that the completeness review is not intended to be review of the SIP's adequacy to meet the standards. Therefore, the grandfathering of these SIP submittals from the policy clarification satisfies this exception as well.

Two, the phrase "affected area" has been substituted for "area." This is to clarify that the sanction only applies in affected areas, and not necessarily all areas for which EPA makes a section 179(a) finding. (See the discussion of "affected area" under the definitions section above.) Three, the second sentence regarding highway sanctions has been clarified to provide that correction of the deficiency "forming the basis of the finding" is needed to stop the clock. This language is consistent with the language included in the proposal section 52.31(d)(1) for the offset sanction in sentence 1 and consistent with the interpretation established in the preamble to the proposed rule at pages 51272–51273. This revision merely clarifies what deficiency needs to be corrected in order to stop the sanctions clock.

Finally, a new final sentence has been added to the section. The sentence provides that for clocks started by rulemaking actions (i.e., disapprovals and findings of failure to implement), the date of the finding starting the clock is the "effective date" of the action, not necessarily the date it is signed or the date it is published in the **Federal Register**. Since the disapproval or finding of failure to implement is not effective until the "effective date" of the final action, the sanctions clock should not start until such action is effective. Upon further reflection, EPA determined that the clarification should be included in the rule in order to ensure that the public is adequately apprised of when the sanctions clock has started for particular areas based on a rulemaking action.

The EPA has revised the final rule to add new sections §§ 52.31(d)(2), (d)(3), and (d)(4). In response to comments, these sections incorporate a revision made to the rule concerning how and when sanctions, not yet applied, may be deferred and sanctions, already applied, may be stayed. A complete discussion of the revisions is set forth in section II.B.3. above. These corrections concern the circumstance where EPA has disapproved a required submittal or where EPA has found that a State has failed to implement an approved SIP. Sections 52.31(d)(2) and 52.31(d)(3) set forth language concerning disapproved SIP's and § 52.31(d)(4) sets forth the

[35] See "'Grandfathering' of Requirements for Pending SIP Revisions," memorandum from Gerald A. Emison to Air Division Director, Regions I–X, June 27, 1988. This memorandum has been entered in the docket for this rulemaking.

language regarding cases where EPA has made a final finding of failure to implement. For purposes of an initial disapproval or an initial finding of failure to implement for which EPA subsequently proposes a positive finding and issues an interim final rule finding that the State has corrected the deficiency, any sanctions resulting from a clock that expires will be deferred and any sanctions that have been applied will be stayed. (A final conditional approval would continue any stay or deferral that resulted from a proposed conditional approval.) This change providing for a stay or deferral of sanctions does not change the rule's requirement that sanctions and sanctions clocks are not permanently stopped until EPA issues a final full approval or determination that a State is implementing its SIP.

A new § 52.31(d)(5) has been added which reaffirms what EPA actions are necessary for the mandatory sanctions process to permanently cease. Specifically, it provides that any sanction clock will be permanently stopped and sanctions applied, stayed or deferred will be permanently lifted upon a final EPA finding that the deficiency forming the basis of the finding has been corrected. For a sanctions clock and applied sanctions based on a finding of failure to submit or incompleteness, a finding that the deficiency has been corrected will occur by letter from EPA to the governor. For a sanctions clock or applied, stayed or deferred sanctions based on a SIP disapproval, a finding that the deficiency has been corrected will occur through a final notice in the **Federal Register** fully approving the revised SIP. For a sanctions clock or applied, stayed or deferred sanctions based on a finding of nonimplementation, a finding that the deficiency has been corrected will occur through a final notice in the **Federal Register** finding that the State is implementing the approved SIP.

Section 52.31(d)(6) is essentially unchanged from § 52.31(d)(2) of the proposed rule. This section makes clear that EPA may take rulemaking action in any specific circumstance to reverse the order in which sanctions will be applied under section 179(a). In other words, EPA can take rulemaking action so that the highway sanction would apply after 18 months and the offset sanction 6 months thereafter. Two minor, nonsubstantive, changes were made. First, EPA replaced the phrase "the EPA" with "the Administrator." Second, EPA changed the term "should" to "shall" to more firmly reflect the mandatory nature of the sanctions

5. Section 52.31(e)—Available Sanctions and Methods for Implementation

Section 52.31(e) sets forth the two sanctions that are applied by section 179(a). This rule, as did the proposed rule, interprets in greater detail the offset sanction provided under section 179(b)(2).

Regarding § 52.31(e)(1), applicability of the offset sanction, there have been several changes that are intended to more clearly capture the concepts in the proposed rule and the preamble to the proposed rule. The EPA has clarified the applicability of the offset sanction to PM–10 precursors, modified the rule for PM–10 and ozone precursors, and clarified the language in the rule regarding the pollutant applicability of the offset sanction when the SIP deficiency in question is not specific to a pollutant or pollutants. A discussion of these changes in the context of the specific sections follows.

The EPA has revised § 52.31(e)(1)(i) in several ways. First, EPA has removed the offset sanction table from the rule and decided to provide the public information on areas that will be potentially subject to sanctions in a separate **Federal Register** notice. As EPA makes clear elsewhere in this paragraph and the rule, the sanctions automatically apply in the timeframes prescribed under § 52.31(d), unless EPA determines that the State has corrected the relevant SIP deficiency forming the basis of the finding. The EPA never intended the inclusion of areas in a table in this rule to be necessary for sanctions to apply automatically. The EPA does believe that it must provide the public with as accurate information as possible on areas that may face sanctions and has elected to do so through notices in the **Federal Register** rather than through a table in the body of the rule. Substantively, there is no difference in the sense that areas will face sanctions in the timeframes prescribed under § 52.31(d) regardless of whether they are listed in a table in the rule or listed in a separate notice.

Second, EPA has added the clause "in the timeframe prescribed under § 52.31(d) of this section on those affected areas subject under § 52.31(d) to the offset sanction of this section." As noted above, sanctions apply automatically regardless of whether there is a table in the rule listing the areas subject to sanctions. Thus, this change was made to make it clear that the sanctions apply within the time frames set forth in § 52.31(d). To further clarify this point, a second change to proposed § 52.31(e)(1)(i) was to delete "following" in the clause referencing the offset ratio for pollutants and their precursors. The reason for this change is because the table has been deleted and thus no areas will be listed. The first sentence of § 52.31(e)(1)(i) continues to require that the 2 to 1 offsets be achieved for the pollutant or pollutants and any precursors for which the finding is made. (For further discussion of this issue, see section II.B.2.)

The EPA has added a second sentence to § 52.31(e)(1)(i). This sentence is partially derived from § 52.31(e)(1)(iv) of the proposed rule. The purpose of moving this sentence was to alleviate redundancy in the proposed rule. The first sentence of proposed § 52.31(e)(1)(iv) appeared to echo proposed § 52.31(e)(1)(i) by stating that offsets must be achieved for the pollutant(s) and its (their) precursors for which the finding was made. Therefore, EPA has not included the first sentence of proposed § 52.31(e)(1)(iv) in the final rule and has moved the second sentence of proposed § 52.31(e)(1)(iv) to final § 52.31(e)(1)(i). The sentence now located as the second sentence of § 52.31(e)(1)(i) continues to provide that if the underlying finding is not specific to one or more pollutants and their precursors, then the offset sanction shall apply to all pollutants and, as relevant, their precursors for which the area is subject to the new source requirement of section 173 of the Act. (See section II.B.2. for further discussion of pollutant applicability of the offset sanction.) This provision, of course, would apply to any area (nonattainment, attainment, or unclassified) that is the subject of the finding.

In its entirety, then, § 52.31(e)(1)(i) now provides: (1) That the emission offset sanction applies within the time specified in § 52.31(d), even though the rule now contains no offset sanction table; (2) that the ratio of emission reductions to increased emissions shall be 2:1; and (3) that the offset ratio shall apply to the one or more pollutants and their precursors for which the § 52.31(c) finding was made or to all pollutants and their precursors (for which the area is subject to the new source requirement of section 173 of the Act) if the finding was not pollutant specific.

The EPA has added new § 52.31(e)(1)(ii) to specifically address the issue of findings made with respect to ozone and its two precursors, VOC and $NO_X$. This was discussed generally in the preamble to the proposed rule at page 51276, footnote 18, although no specific language was included in the proposed rule. The Act establishes requirements for ozone nonattainment areas, some of which are specific for either VOC or $NO_X$. However, since the

general assumption is that both precursors are critical to ozone formation, EPA believes that even though a finding may be specific as to one ozone precursor, the offset sanction should apply for both precursors. However, there are two exceptions to this general requirement, both of which are based on the Act. First, affected areas that are designated nonattainment for ozone but that are not classified as marginal, moderate, serious, severe or extreme, are not required to achieve offsets under section 173 for $NO_X$. The second exception is for affected areas that have received a $NO_X$ exemption from the NSR requirement pursuant to section 182(f). These two exceptions and the rationale for them are discussed in section II.B.2. above. A new § 52.31(e)(1)(iii) sets up a similar provision with respect to PM–10 precursors, which is also discussed in more detail in section II.B.2. above.

Section 52.31(e)(1)(iv) of the final rule has merely been renumbered. Section 52.31(e)(1)(iii) of the proposed rule previously contained these requirements and substantially remains unchanged. The preamble to the proposed rule at page 51276 provides that this section requires States to apply the offset sanction consistent with amended section 173, regardless of whether the State has approved NSR rules consistent with section 173 requirements. The purpose of this provision is to ensure that States that have been delinquent in meeting the NSR requirements of the amended Act are not benefitted by applying sanctions in accordance with NSR rules that are more lenient than required by the Act or by the absence of NSR requirements within the State. Under this section, therefore, all affected areas subject to the offset sanctions would be subject to similar requirements in achieving those offsets, as specified in the amended Act.

Section 52.31(e)(1)(v) of this rule is unchanged from § 52.31(e)(1)(v) of the proposed rule. The purpose of this provision is to establish when the increased offset requirement will be applied. As noted in section II.B.2. above, EPA received numerous comments on this issue. For purposes of applying the offset sanction, EPA had some flexibility in determining what permits would be subject to the increased offset requirement. As noted in section II.B.2., numerous commenters suggested other possibilities. For example, some suggested that the increased offset ratio only apply to permits for which an application was received after the date the offset sanction applied. As stated more fully in the detailed response to comments document located in the docket, EPA has determined that the offset sanction should have immediate effects in affected areas.

Section 52.31(e)(2) of the final rule sets forth the highway sanction. Several revisions have been made to this section. As with § 52.31(e)(1)(i), EPA has removed the highway sanction table from § 52.31(e)(2) of the proposed rule for the same reasons discussed above for why the offset sanction table was removed. Similarly, § 52.31(e)(2) includes new language that directly refers to the timing provisions of § 52.31(d). As with the similar revised language in § 52.31(e)(1)(i), this is merely to clarify that the highway sanction applies with respect to the times set forth in that subsection, even though the area is not listed in a table in the rule. In addition, a new sentence has been added which specifies that the highway sanction only applies to affected areas that are also nonattainment areas. Although this issue was not specifically addressed in the proposed rule, the proposed rule and the preamble to the proposed rule referred back to the section 179(b)(1) highway sanction requirement of the Act (58 FR 51274, 51279; § 51.32(e)(2) of the proposed rule.) Section 179(b)(1) states that "[t]he Administrator may impose a prohibition, applicable to a nonattainment area * * *." Therefore, EPA is incorporating this language, which was merely referenced in the proposed rule, into the final rule.

## III. Implications of Today's 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." Under this final rule, sanctions will apply automatically in the sequence prescribed herein in all instances in which mandatory sanctions are applied under section 179(a) following findings under section 179(a)(1)–(4) for part D plans or plan revisions that EPA has already made or that EPA will make in the future, except when EPA takes a separate action to reverse the sanction sequence. However, if the sanction clock has expired for any findings before September 6, 1994, no sanction has yet applied since EPA interprets section 179(a) to provide that sanctions shall not apply until EPA makes the sanction selection through notice-and-comment rulemaking. Since this action constitutes the final sanction selection rulemaking, the offset sanction begins to apply on any areas for which the sanction clock has elapsed on September 6, 1994. To understand the timing of the application of mandatory sanctions in these cases, it is first necessary to clarify the discussion in the proposal at p. 51274 on how the sanction clocks function under section 179(a).

Section 179(a) sets up two distinct sanction clocks. The Act states that if the State does not correct the deficiency within 18 months after a finding, one of the two available sanctions shall apply, as selected by the Administrator. It then provides that if the deficiency has not been corrected within 6 months thereafter, then both available sanctions shall apply. The EPA interprets this to mean that the second sanction always follows 6 months from the actual application of first, regardless of whether this would cause the application of the second sanction to be delayed beyond 24 months from the date of the finding. Therefore, on September 6, 1994 the offset sanction shall apply on any area(s) for which an 18-month sanction clock has elapsed and EPA has not determined that the State has not corrected the deficiency. Both sanctions shall then apply 6 months from that date if EPA has not determined the deficiency has been corrected by then.

The EPA intends to notify States of the application and removal of section 179 mandatory sanctions (as provided for in § 52.31(d) of this rule) before they apply. In addition, in its actions on submittals received after a section 179(a) finding, EPA will indicate what the effect of its action is on the sanctions clock and sanctions application. The following discussion explains how this will occur, first providing the examples where, prior to 18 months, EPA finally determines whether the State has corrected the deficiency prompting the finding, and then providing examples where EPA finally determines the deficiency has been corrected after month 18.

In the cases where, prior to 18 months, EPA completes its action determining that the State has corrected the section 179(a) deficiency, sanctions would not apply. The following two examples address instances in which EPA finally determines within 18 months of the finding that started the sanctions clock whether the State has corrected the deficiency and how EPA's action finding the State corrected the deficiency affects the sanction clock.

In the case where, within 18 months following a finding of nonsubmittal or incompleteness, EPA determines

whether a State's SIP submittal corrects the deficiency prompting the finding (i.e., is complete or incomplete), EPA will inform the State of whether the sanctions clock is stopped when it sends the completeness or incompleteness letter to the State. If the SIP submittal is incomplete, then the letter will indicate that the sanctions clock continues and that automatic sanctions will apply as prescribed by this rule. If the SIP submittal is complete, then the letter will indicate that the sanctions clock started by the prior finding of failure to submit or incompleteness permanently stops.

In the case where, within 18 months following a SIP disapproval or finding of nonimplementation, EPA determines whether the State has corrected the deficiency prompting the finding (i.e., whether the SIP is approvable or whether the nonimplementation deficiency has been corrected), EPA will indicate whether the sanctions clock is stopped when it takes final rulemaking action on the SIP.[36] If EPA finally disapproves the SIP or finally determines that the nonimplementation deficiency has not been corrected, then the **Federal Register** action will indicate that the sanctions clock continues and that automatic sanctions will apply as prescribed by this rule. If EPA finally approves the SIP or finally determines that the nonimplementation deficiency has been corrected, then the **Federal Register** action will indicate that the sanctions clock started by the prior disapproval or finding of nonimplementation permanently stops.

The following examples address how, following the section 179(a) findings, the States will be kept informed when EPA's actions on revised SIP's are not completed within 18 months of the finding's deficiency. As provided in this rule at § 52.31(d)(1) through (4), in explaining how the States will be kept informed, these examples address sanction removal, as well as sanction deferral and staying.

In EPA interim final determinations that the State has corrected the deficiency, issued simultaneously with EPA proposed approvals and proposed findings that States are implementing their SIP's (after EPA SIP disapprovals or findings of nonimplementation), EPA intends to notify interested parties, including States, of any deferral or staying of sanctions that will result from **Federal Register** actions proposing to approve SIP's or to find that the State is implementing its SIP, as provided for in § 52.31(d)(2), (3) and (4) of this rule. In these cases, EPA will also indicate to all interested parties whether sanctions are removed, apply or reapply when it takes subsequent final action on the plan in the **Federal Register**. If subsequently EPA's proposed positive finding is reversed, then in that action EPA will indicate that sanctions apply or reapply, as appropriate, and what sanctions, if any, apply subsequently. If EPA subsequently fully approves the revised plan, then in that action EPA will indicate that the sanctions clock permanently stops and that any sanctions previously applied due to the original disapproval or finding of failure to implement are removed.

In addition to these letters and **Federal Register** actions, the EPA will also periodically publish notices in the **Federal Register** in which EPA will provide the public with information on areas for which EPA has made findings and which, therefore, are likely to be subject to the offset and highway sanctions.[37] If removal, staying, or deferral of sanctions is warranted, EPA will similarly provide the public with information that sanctions have either been removed, stayed or deferred in the area. Finally, to supplement the various letters and actions discussed above, EPA will provide information on the status of sanction 12 findings on EPA's Technology Transfer Network (TTN).[38]

*B. Areas Potentially Subject to Sanctions*

The EPA has made section 179(a) findings of failure to submit and incompleteness for numerous submittals due under the amended Act. As explained in section II.C.5 above, EPA has elected to provide the public with information on areas potentially subject to sanctions in a separate notice that appears in the notice section of today's **Federal Register** rather than in tables in today's rule. Therefore, for further information on areas likely to face sanctions on September 6, 1994 see that other notice.

## IV. Miscellaneous

*A. Executive Order 12866*

Under Executive Order 12866 (Order), (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Order. The Order defines "significant regulatory actions" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interface with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Order.

Pursuant to the terms of the Order, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

*B. Regulatory Flexibility Act*

1. Proposal

The proposal includes a discussion of the impact of the rule on small entities at pages 51277–8. The regulatory flexibility analysis (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 an RFA 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 was prepared pursuant to EPA guidelines, which has been placed in the docket to this rulemaking. For the following three reasons, EPA believes the impact of this rule on small entities will be limited. First, any impact that may occur from the offset sanction is limited to sources defined as "major" for nonattainment

[36] As discussed above in section II.B.1., proposed approval (or a proposal that the nonimplementation deficiency had been corrected) following a SIP disapproval or nonimplementation finding has the effect of deferring and/or staying the application of sanctions. In this case, though, such proposal action would not have a deferral and/or staying effect because it is assumed (for the purposes of this example) that EPA completes final rulemaking action on the SIP within 18 months.

[37] In some cases, the letter and/or the action may be combined with another action relating to the submittal. For example, if following a disapproval EPA proposes to approve a SIP at month 20 after the offset sanction is in place, the interim final determination issued simultaneously with the proposed approval action would also serve to notify the public that application of the offset sanction has been stayed.

[38] The TTN is EPA's bulletin board system for making air quality information available to interested parties. For questions on what information is available on the TTN and how to access it, contact the systems operator (919) 541–5384).

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 in these more serious ozone areas where the major source TPY threshold has been lowered under part D of title I of the Act. Second, the amended Act also increases the nonattainment NSR offset ratio in the ozone nonattainment areas. The ratio ranges from 1.1-to-1 to 1.5-to-1, 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 ozone nonattainment areas where small entities that are also major sources are most likely to exist. Third, as stated above, the only relevant impact period is 6 months in duration, since after that period the State will either have become subject to both sanctions or have corrected the deficiency and been relieved from any sanctions.

2. Comments

Section II.B.1. of this document includes several comments concerning the impact of the proposed rule. One additional comment is summarized here.

The commenter states that the lowering of the major source threshold under the Act exposes many more small sources to control and the likelihood of sanctions. The commenter believes that many such small sources are small businesses and that, contrary to the analysis in the proposal, an increase in the offset ratio of 0.5 could have a significant impact on the ability of businesses to find adequate offsets.

3. Response

The EPA believes that the final rule will have some impact on small entities. The lowering of the major source threshold could expose more sources to the offset sanction. The EPA does not disagree that in individual cases an increase in the offset ratio could have a significant impact on a small business. However, EPA believes that the impact of this rule on small entities will be limited for the second and third reasons discussed above. Additionally, EPA notes that the impact of this rule will also be lessened by the provision in final rules that provides for the deferral and/or staying of the application of sanctions in certain instances when EPA believes it is more likely than not a deficiency has been corrected (see discussion in section II.B.3. of this document). However, because this action will have some impact, a final RFA has been prepared pursuant to EPA guidelines, which has been placed in the docket to this rulemaking.

*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 permit applications beyond that which is already required 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), (42 U.S.C. sec. 4321 et seq.). Historically, exemption determinations by DOT for sanctions have been based on such NEPA documentation and have 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, 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**

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

Dated: July 21, 1994.

**Carol M. Browner,**

*Administrator.*

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

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart A—[Amended]

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

**§ 52.31 Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.**

(a) *Purpose.* The purpose of this section is to implement 42 U.S.C. 7509(a) of the Act, with respect to the sequence in which sanctions will automatically apply 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 (Pub. L. No. 101–549, 104 Stat. 2399).

(2) *Act* means Clean Air Act, as amended in 1990 (42 U.S.C. 7401 *et seq.* (1991)).

(3) *Affected area* means the geographic area subject to or covered by the Act requirement that is the subject of the finding and either, for purposes of the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section, is or is within an area designated nonattainment under 42 U.S.C. 7407(d) or, for purposes of the offset sanction under paragraph (e)(1) of this section, is or is within an area otherwise subject to the emission offset requirements of 42 U.S.C. 7503.

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

(5) *Findings* or *Finding* refer(s) to one or more of the findings, disapprovals, and determinations described in subsection 52.31 (c).

(6) *NAAQS* means national ambient air quality standard the Administrator has promulgated pursuant to 42 U.S.C. 7409.

(7) *Ozone precursors* mean nitrogen oxides ($NO_x$) and volatile organic compounds (VOC).

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

(9) *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.

(10) *Precursor* means pollutant which is transformed in the atmosphere (later in time and space from point of emission) to form (or contribute to the formation of) a criteria pollutant.

(c) *Applicability*

This section shall apply to any State in which an affected area is located and 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:

(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 affected area 18 months from the date when the Administrator makes a finding under paragraph (c) of this section unless the Administrator affirmatively determines that 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 affected area 6 months from the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator affirmatively determines that the deficiency forming the basis of the finding has been corrected. For the findings under paragraphs (c)(2), (c)(3)(ii), and (c)(4) of this section, the date of the finding shall be the effective date as defined in the final action triggering the sanctions clock.

(2)(i) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and the Administrator, prior to 18 months from the finding, has proposed to fully or conditionally approve the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be deferred unless and until the Administrator proposes to or takes final action to disapprove the plan in whole or in part. If the Administrator issues such a proposed or final disapproval of the plan, the offset sanction under paragraph (e)(1) of this section shall apply in the affected area on the later of the date the Administrator issues such a proposed or final disapproval, or 18 months following the finding that started the sanctions clock. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected.

(ii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and after 18 but before 24 months from the finding the Administrator has proposed to fully or conditionally approve the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be stayed and application of the highway sanction under paragraph (e)(2) of this section shall be deferred unless and until the Administrator proposes to or takes final action to disapprove the plan in whole or in part. If the Administrator issues such a proposed or final disapproval of the plan, the offset sanction under paragraph (e)(1) of this section shall reapply in the affected area on the date the Administrator issues such a proposed or final disapproval. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area on the later of 6 months from the date the offset sanction under paragraph (e)(1) of this section first applied in the affected area, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected, or immediately if the proposed or final disapproval occurs more than 6 months after initial application of the offset sanction under paragraph (e)(1) of this section.

(iii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and more than 24 months after the finding the Administrator has proposed to fully or conditionally approve the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section and application of the highway sanction under paragraph (e)(2) of this section shall be stayed unless and until the Administrator proposes to or takes final action to disapprove the plan in whole or in part. If the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall reapply in the affected area on the date the Administrator issues such proposed or final disapproval.

(3)(i) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and the Administrator, prior to 18 months from the finding, has conditionally-approved the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding,

application of the offset sanction under paragraph (e)(1) of this section shall be deferred unless and until the conditional approval converts to a disapproval or the Administrator proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill the commitment in the conditionally-approved plan. If the conditional approval so becomes a disapproval or the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section shall apply in the affected area on the later of the date the approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable, or 18 months following the finding that started the sanctions clock. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected.

(ii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and after 18 but before 24 months from the finding the Administrator has conditionally approved the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be stayed and application of the highway sanction under paragraph (e)(2) of this section shall be deferred unless and until the conditional approval converts to a disapproval or the Administrator proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill the commitment in the conditionally-approved plan. If the conditional approval so becomes a disapproval or the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section shall reapply in the affected area on the date the approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area on the later of 6 months from the date the offset sanction under paragraph (e)(1) of this section first applied in the affected area, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected, or immediately if the conditional approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable, more than 6 months after initial application of the offset sanction under paragraph (e)(1) of this section.

(iii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and after 24 months from the finding the Administrator has conditionally approved the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section and application of the highway sanction under paragraph (e)(2) of this section shall be stayed unless and until the conditional approval converts to a disapproval or the Administrator proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill its commitment in the conditionally-approved plan. If the conditional approval so becomes a disapproval or the Administrator issues such a proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall reapply in the affected area on the date the conditional approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable.

(4)(i) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following findings under paragraph (c)(4) of this section, if the Administrator, prior to 18 months from the finding, has proposed to find that the State is implementing the approved plan and has issued an interim final determination that the deficiency prompting the finding has been corrected, application of the offset sanction under paragraph (e)(1) of this section shall be deferred unless and until the Administrator preliminarily or finally determines, through a proposed or final finding, that the State is not implementing the approved plan and that, therefore, the State has not corrected the deficiency. If the Administrator so preliminarily or finally determines that the State has not corrected the deficiency, the offset sanction under paragraph (e)(1) of this section shall apply in the affected area on the later of the date the Administrator proposes to take action or takes final action to find that the finding of nonimplementation has not been corrected, or 18 months following the finding that started the sanctions clock. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section first applies, unless the Administrator preliminarily or finally determines that the deficiency forming the basis of the finding has been corrected.

(ii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following findings under paragraph (c)(4) of this section, if after 18 months but before 24 months from the finding the Administrator has proposed to find that the State is implementing the approved plan and has issued an interim final determination that the deficiency prompting the finding has been corrected, application of the offset sanction under paragraph (e)(1) of this section shall be stayed and application of the highway sanction under paragraph (e)(2) of this section shall be deferred unless and until the Administrator preliminarily or finally determines, through a proposed or final finding, that the State is not implementing the approved plan and that, therefore, the State has not corrected the deficiency. If the Administrator so preliminarily or finally determines that the State has not corrected the deficiency, the offset sanction under paragraph (e)(1) of this section shall reapply in the affected area on the date the Administrator proposes to take action or takes final action to find that the finding of nonimplementation has not been corrected. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area on the later of 6 months from the date the offset sanction under paragraph (e)(1) of this section first applied in the affected area, unless the Administrator preliminarily or finally determines that the deficiency forming the basis of the finding has been corrected, or immediately if EPA's proposed or final action finding the deficiency has not been corrected occurs more than 6 months after initial application of the offset sanction under paragraph (e)(1) of this section.

(iii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following findings under paragraph (c)(4) of this section, if after 24 months from the finding the

Administrator has proposed to find that the State is implementing the approved plan and has issued an interim final determination that the deficiency prompting the finding has been corrected, application of the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall be stayed unless and until the Administrator preliminarily or finally determines, through a proposed or final finding, that the State is not implementing the approved plan, and that, therefore, the State has not corrected the deficiency. If the Administrator so preliminarily or finally determines that the State has not corrected the deficiency, the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall reapply in the affected area on the date the Administrator proposes to take action or takes final action to find that the finding of nonimplementation has not been corrected.

(5) Any sanction clock started by a finding under paragraph (c) of this section will be permanently stopped and sanctions applied, stayed or deferred will be permanently lifted upon a final EPA finding that the deficiency forming the basis of the finding has been corrected. For a sanctions clock and applied sanctions based on a finding under paragraphs (c)(1) and (c)(3)(i) of this section, a finding that the deficiency has been corrected will occur by letter from the Administrator to the State governor. For a sanctions clock or applied, stayed or deferred sanctions based on a finding under paragraphs (c)(2) and (c)(3)(ii) of this section, a finding that the deficiency has been corrected will occur through a final notice in the **Federal Register** fully approving the revised SIP. For a sanctions clock or applied, stayed or deferred sanctions based on a finding under paragraph (c)(4) of this section, a finding that the deficiency has been corrected will occur through a final notice in the **Federal Register** finding that the State is implementing the approved SIP.

(6) Notwithstanding paragraph (d)(1) of this section, nothing in this section will prohibit the Administrator from determining through notice-and-comment rulemaking that in specific circumstances the highway sanction, rather than the offset sanction, shall apply 18 months after the Administrator makes one of the findings under paragraph (c) of this section, and that the offset sanction, rather than the highway sanction, shall apply 6 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)(vi) of this section, the State shall apply the emissions offset requirement in the timeframe prescribed under paragraph (d) of this section on those affected areas subject under paragraph (d) of this section to the offset sanction. The State shall apply the emission offset requirements in accordance with 42 U.S.C. 7503 and 7509(b)(2), at a ratio of at least two units of emission reductions for each unit of increased emissions of the pollutant(s) and its (their) precursors for which the finding(s) under paragraph (c) of this section is (are) made. If the deficiency prompting the finding under paragraph (c) of this section is not specific to one or more particular pollutants and their precursors, the 2-to-1 ratio shall apply to all pollutants (and their precursors) for which an affected area within the State listed in paragraph (e)(1)(i) of this section is required to meet the offset requirements of 42 U.S.C. 7503.

(ii) Notwithstanding paragraph (e)(1)(i) of this section, when a finding is made with respect to a requirement for the criteria pollutant ozone or when the finding is not pollutant-specific, the State shall not apply the emissions offset requirements at a ratio of at least 2-to-1 for emission reductions to increased emissions for nitrogen oxides where, under 42 U.S.C. 7511a(f), the Administrator has approved an $NO_X$ exemption for the affected area from the Act's new source review requirements under 42 U.S.C. 7501–7515 for $NO_X$ or where the affected area is not otherwise subject to the Act's new source review requirements for emission offsets under 42 U.S.C. 7501–7515 for $NO_X$.

(iii) Notwithstanding paragraph (e)(1)(i) of this section, when a finding under paragraph (c) of this section is made with respect to PM–10, or the finding is not pollutant-specific, the State shall not apply the emissions offset requirements, at a ratio of at least 2-to-1 for emission reductions to increased emissions to PM–10 precursors if the Administrator has determined under 42 U.S.C. 7513a(e) that major stationary sources of PM–10 precursors do not contribute significantly to PM–10 levels which exceed the NAAQS in the affected area.

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

(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 and 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.* The highway sanction shall apply, as provided in 42 U.S.C. 7509(b)(1), in the timeframe prescribed under paragraph (d) of this section on those affected areas subject under paragraph (d) of this section to the highway sanction, but shall apply only to those portions of affected areas that are designated nonattainment under 40 CFR part 81.

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–5023–2]

### Notice of Areas Potentially Subject to Sanctions Based on Findings Issued Under Section 179 of the Clean Air Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice lists those areas for which EPA had previously issued a finding, under the Clean Air Act (Act), and for which the 18-month mandatory sanction clock had expired on or before July 15, 1994 or is projected to expire through August 31, 1994. If these areas do not correct the outstanding deficiencies before the effective date of the "Selection of Sequence of Mandatory Sanctions Rule" (sanctions rule), which is found in today's **Federal Register** in the rules section and becomes effective September 6, 1994, these areas would be subject to sanctions. The sanctions rule describes in detail the process by which sanctions will apply to areas that do not meet deadlines specified in the Act and for which findings are made.

As noted in the list, the vast majority of areas plan to take corrective action before the sanctions rule goes into effect. However, any area that does not take the required action before that time will be subject to the 2 to 1 emissions offset sanction (offset sanction) as provided by the Act. Futhermore, in most cases, if EPA has not determined that the deficiency has been corrected within 6 months of the imposition of the offset sanction, the second sanction, affecting Federal highway funding, will also apply.

**ADDRESS(ES):** Air Docket A–94–41, The Air and Radiation Docket and Information Center (6202), Environmental Protection Agency, 401 M St. SW., Room M–1500, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** The table below lists those areas with active sanctions clocks resulting from a finding. This table should not be used as the sole guide to determine which areas will be subject to sanctions when the sanctions rule goes into effect. In fact, it is likely that today's list may be obsolete with respect to many areas by the effective date of the sanctions rule because these areas will have corrected the relevant deficiency by that date. It is important to note that the enclosed table reflects only those areas for which clocks had expired as of July 15, 1994 or is projected to expire through August 31, 1994. There are other sanctions clocks running under the Act (e.g., any area that has not yet made a complete submission to EPA for State implementation plan (SIP) elements due on November 15, 1993). In the future, other sanction clocks will be initiated if EPA finds that a State has failed to make a required submittal, if EPA determines that a State submittal is incomplete, if EPA disapproves a State submission, or if a State fails to implement an approved plan.

The EPA will periodically provide the public with access to updated information through the Office of Air Quality Planning and Standards' Technology Transfer Network computer bulletin board system and through updates of this information in the **Federal Register**. These updates will indicate cases in which sanctions have been deferred or stayed, delete areas for which EPA has made a final determination that the deficiencies prompting the findings have been corrected, and add additional areas as findings are made triggering sanctions clocks. Furthermore, EPA will publish a notice with a similar table, as appropriate, for areas that later may be subject to the highway sanction.

For each area potentially subject to the offset sanction on the effective date of the sanctions rule, the table below identifies the State, the affected area, the type of finding the area received, the SIP element, the pollutants affected by the offset sanction, the date the sanctions clock expires, and the corrective actions needed to stop the sanctions clock.

The "Affected Area" column lists the area in which the offset sanction would apply if the deficiencies are not corrected by the effective date of the sanctions rule. For more information on the boundaries of any listed area, the public can refer to 40 CFR part 81, which sets forth the designations for areas and establishes their boundaries. Footnoted areas are included because a SIP submittal was disapproved. All other areas are included as a result of a finding of nonsubmittal or incompleteness. The full set of letters reflecting the findings of nonsubmittal or incompleteness that EPA has already issued can be found in Air Docket A–94–41. Please refer to the sanctions rule for a discussion on the significance of finding type.

The "State Implementation Plan Element" column describes the SIP element on which the finding was based. Abbreviations are as follows: VOC—volatile organic compounds, CO—carbon monoxide, NOx—nitrogen oxides, PM–10—particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The SIP elements and their respective sections in the Act are as follows: VOC Reasonably Available Control Technology Fix-ups—section 182(a)(2)(A); PM–10 SIP Attainment Demonstration—section 189(a); Emission Statements—section 182(a)(3)(B); PM–10 New Source Review—sections 172(c)(5) and 189(a)(1)(A); Basic Vehicle Inspection and Maintenance—for ozone, section 182(b)(4), and for CO, section 187(a)(4); Enhanced Vehicle Inspection and Maintenance—section 182(c)(3)(A); VOC Reasonably Available Control Technology Catch-up—section 182(b)(2); NOx Reasonably Available Control Technology Rules—section 182(b)(2) and (f); Employer Commute Option Program—section 182(d)(2); Oxygenated Fuels—for serious areas, section 187(b)(3) and for moderate areas, section 211(m); CO Contingency Measures—section 187(a)(3); CO Attainment Demonstration—section 187(a)(7).

The "Pollutants Affected" column describes which pollutants and their precursors would be affected should the offset sanction be applied. The preamble of the sanctions rule explains when precursors will be subject to the offset sanction. The "Date Sanction Clock Expires" column is the date the 18-month sanction clock expires. In the future, this column will include information on the deferral and stay of any sanction under § 52.31(d) of the sanctions rule. The "Corrective Actions Needed" column provides specific actions that must be completed to stop imposition of sanctions for each area on the list.

## STATUS OF SANCTIONS CLOCKS

[Outstanding State Plan Submittals as of July 15, 1994]

| State | Affected area | State implementation plan element | Pollutants affected | Date sanction clock expires | Corrective actions needed |
|---|---|---|---|---|---|
| AZ | Phoenix area | Ozone New Source Review. | VOC, NOx | 07/15/94 | The State and Maricopa County adoption of rules is scheduled for August 9, 1994. The State and County are expected to submit plans to EPA on August 12. The EPA expects to issue completeness determinations by August 31. |
| AZ | Phoenix area | VOC Reasonably Available Control Technology Catch-up. | VOC, NOx | 07/15/94 | Maricopa County adoption of rules is scheduled for August 5, 1994. The State is expected to submit the plan to EPA on August 10. The EPA expects to issue a completeness determination by August 17. |
| AZ | Maricopa County; Phoenix planning area. | PM–10 New Source Review. | PM–10 and precursors. | 07/15/94 | The State and Maricopa County adoption of rules is scheduled for August 9, 1994. The State and County are expected to submit plans to EPA on August 12. The EPA expects to issue completeness determinations by August 31. |
| AZ | Pima County; Ajo planning area. | PM–10 New Source Review. | PM–10 and precursors. | 07/15/94 | The State and Pima County adoption of rules is scheduled for August 9, 1994. The State and County are expected to submit plans to EPA on August 12. The EPA expects to issue completeness determinations by August 31. |
| AZ | Pima County; Rillito planning area. | PM–10 New Source Review. | PM–10 and precursors. | 07/15/94 | The State and Pima County adoption of rules is scheduled for August 9, 1994. The State and County are expected to submit plans to EPA on August 12. The EPA expects to issue completeness determinations by August 31. |
| AZ | Pima County; Rillito planning area. | PM–10 Attainment Demonstration. | PM–10 and precursors. | 11/14/93 | The State plan was submitted to EPA on April 22, 1994. The EPA expects to issue a completeness determination by August 15. |
| AZ | Yuma County; Yuma planning area. | PM–10 Attainment Demonstration. | PM–10 and precursors. | 11/14/93 | The State expects to submit the plan to EPA on July 18, 1994. The EPA expects to issue a completeness determination by August 15. |
| CA | Los Angeles-South Coast Air Basin area. | CO Contingency Measures. | CO | 07/15/94 | The State expects to submit the plan to EPA on July 18, 1994. The EPA expects to issue a completeness determination by July 22. |
| CA | Los Angeles-South Coast Air Basin area [1]. | VOC Reasonably Available Control Technology Fix-up. | VOC, NOx | 05/26/94 | The State plan was submitted to EPA on May 24, 1994. The EPA expects to publish an action in the FEDERAL REGISTER by August 19. |
| CA | Sacramento Metro area. | VOC Reasonably Available Control Technology Catch-up. | VOC, NOx | 07/15/94 | The State plan was submitted to EPA on July 13, 1994. The EPA expects to issue a completeness determination by July 22. |
| CA | San Diego area | Ozone New Source Review. | VOC, NOx | 07/15/94 | The State plan was submitted to EPA on July 18, 1994. The EPA expects to issue a completeness determination by July 22. |
| CA | San Diego area | VOC Reasonably Available Control Technology Catch-up.. | VOC, NOx | 07/15/94 | The State plan was submitted to EPA on July 13, 1994. The EPA expects to issue a completeness determination by July 22. |
| CA | San Diego area [1] | VOC Reasonably Available Control Technology Fix-up. | VOC, NOx | 05/26/94 | The State plan was submitted to EPA on May 24, 1994. The EPA expects to publish an action in the FEDERAL REGISTER by August 19. |
| CA | San Francisco-Bay area [1]. | VOC Reasonably Available Control Technology Fix-up. | VOC, NOx | 05/26/94 | The State plan was submitted to EPA on July 13, 1994. The EPA expects to publish an action in the FEDERAL REGISTER by August 19. |

STATUS OF SANCTIONS CLOCKS—Continued

[Outstanding State Plan Submittals as of July 15, 1994]

| State | Affected area | State implementation plan element | Pollutants affected | Date sanction clock expires | Corrective actions needed |
|---|---|---|---|---|---|
| CA | San Joaquin Valley area. | VOC Reasonably Available Control Technology Catch-up. | VOC, NOx | 07/15/94 | The State plan was submitted to EPA on July 13, 1994. The EPA expects to issue a completeness determination by July 22. |
| CA | Santa Barbara-Santa Maria-Lompoc area. | VOC Reasonably Available Control Technology Catch-up. | VOC, NOx | 07/15/94 | The State plan was submitted to EPA on July 13, 1994. The EPA expects to issue a completeness determination by July 22. |
| CA | Southeast Desert Modified AQMA area. | VOC Reasonably Available Control Technology Catch-up. | VOC, NOx | 07/15/94 | The State plan was submitted to EPA on July 13, 1994. The EPA expects to issue a completeness determination by July 22. |
| IN | Lake and Porter Counties portion of Chicago-Gary-Lake County area. | VOC Reasonably Available Control Technology Catch-up. | VOC, NOx | 07/15/94 | The State Board is expected to adopt the rule on August 3, 1994. The rule would become effective on August 6. The State expects to submit the plan to EPA by August 10. The EPA expects to issue a completeness determination by August 15. |
| MD | Baltimore area | Employer Commute Option. | VOC, NOx | 07/19/94 | The State submitted a preliminary plan to EPA on July 15, 1994. The State expects to adopt the rule on August 5, and submit the final rule to EPA shortly thereafter. The EPA expects to issue a completeness determination by August 15. |
| MD | Cecil County Portion of Philadelphia-Wilmington-Trenton area. | Employer Commute Option. | VOC, NOx | 07/19/94 | The State submitted a preliminary plan to EPA on July 15, 1994. The State expects to adopt the rule on August 5, and submit the final rule to EPA shortly thereafter. The EPA expects to issue a completeness determination by August 15. |
| ME | Knox County and Lincoln County. | NOx Reasonably Available Control Technology Rules. | VOC, NOx | 07/15/94 | A State-wide rule was sent out for public comment on June 15, 1994. The State expects to adopt the rule by July 20 and submit it to EPA by August 15. The EPA expects to issue a completeness determination by August 22. |
| ME | Lewiston-Auburn area. | NOx Reasonably Available Control Technology Rules. | VOC, NOx | 07/15/94 | A State-wide rule was sent out for public comment on June 15, 1994. The State expects to adopt the rule by July 20 and submit it to EPA by August 15. The EPA expects to issue a completeness determination by August 22. |
| ME | Portland area | NOx Reasonably Available Control Technology Rules. | VOC, NOx | 07/15/94 | A State-wide rule was sent out for public comment on June 15, 1994. The State expects to adopt the rule by July 20 and submit it to EPA by August 15. The EPA expects to issue a completeness determination by August 22. |
| ME | Rest of State (Attainment and Marginal areas in Northeast Ozone Transport Region). | NOx Reasonably Available Control Technology Rules. | VOC, NOx | 07/15/94 | A State-wide rule was sent out for public comment on June 15, 1994. The State expects to adopt the rule by July 20 and submit it to EPA by August 15. The EPA expects to issue a completeness determination by August 22. |
| MO | St. Louis area | Basic Vehicle Inspection and Maintenance. | VOC, NOx | 07/15/94 | Necessary legislation was passed in May 1994, but will not go into effect until August 28. The State has scheduled a public hearing on July 28 and expects to adopt an emergency rule that will become effective on August 28. The State will then submit the plan to EPA and EPA expects to issue a completeness determination shortly thereafter. |

STATUS OF SANCTIONS CLOCKS—Continued

[Outstanding State Plan Submittals as of July 15, 1994]

| State | Affected area | State implementation plan element | Pollutants affected | Date sanction clock expires | Corrective actions needed |
|---|---|---|---|---|---|
| TN | Memphis area | Oxygenated Fuels (for moderate areas). | CO | 07/15/94 | The EPA expects to publish a direct final FEDERAL REGISTER notice approving the State's request for redesignation by July 22, 1994. The EPA expects to make the final action effective shortly after August 22. |
| TN | Memphis area | Basic Vehicle Inspection and Maintenance. | CO | 07/15/94 | The EPA expects to publish a direct final FEDERAL REGISTER notice approving the State's request for redesignation by July 22, 1994. The EPA expects to make the final action effective shortly after August 22. |
| TN | Nashville area | Ozone New Source Review. | VOC, NOx | 07/15/94 | The State has indicated the rule will be effective August 15, 1994 and submitted to EPA by August 16. The EPA expects to issue a completeness determination by August 18. |
| VT | Burlington Metropolitan Statistical area. | Enhanced Vehicle Inspection and Maintenance. | VOC, NOx | 07/15/94 | The State legislature needs to authorize the program and will not reconvene until January 1995. |
| VT | Entire State (Attainment areas in Northeast Ozone Transport Region). | VOC Reasonably Available Control Technology Catch-up. | VOC, NOx | 07/15/94 | The EPA has determined that the State has made a complete submittal for 10 of 11 required rules. The remaining rule will go into effect on August 17, 1994. The State expects to submit the plan to EPA by August 19. The EPA expects to issue a completeness determination by August 22. |
| WV | Charleston area | Basic Vehicle Inspection and Maintenance. | VOC, NOx | 07/15/94 | The EPA proposed redesignation approval of this area to attainment on June 13, 1994. The comment period closed; no adverse comments were received. Final redesignation approval is expected by August 15. |
| WV | Huntington-Ashland area. | Basic Vehicle Inspection and Maintenance. | VOC, NOx | 07/15/94 | The EPA expects to publish a direct final FEDERAL REGISTER notice approving the State's request for redesignation by August 15, 1994. The EPA expects to make the final action effective shortly after September 15. |
| WV | Parkersburg-Marietta area. | Basic Vehicle Inspection and Maintenance. | VOC, NOx | 07/15/94 | The EPA proposed redesignation approval of this area to attainment on June 10, 1994. The comment period closed; no adverse comments were received. Final redesignation approval is expected by August 15. |

[1] These plans were formally disapproved because they did not fully meet EPA published requirements. The final disapproval started an 18-month sanction clock, which expired in May 1994. To stop the sanctions clock, EPA must finalize an approval action in the FEDERAL REGISTER incorporating a revision that corrects the deficiencies in the State plan. Sanctions may be stayed or deferred based on a determination that the deficiency has been corrected. This determination would be made by an interim final rule published on or after the time EPA has proposed approval of the plan.

Dated: July 21, 1994.

**Mary D. Nichols,**

*Assistant Administrator.*

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