

the information contained in this notice applies to attainment, nonattainment, and unclassifiable areas.

As of this date EPA has published two final rules related to sanctions. A final rule was published in the **Federal Register** on January 11, 1994, entitled, "Criteria for Exercising Discretionary Sanctions under Title I of the Clean Air Act" (59 FR 1476). It establishes criteria to guide EPA's decision on whether, in a specific circumstance, to impose discretionary sanctions on a statewide basis under section 110(m).

A second regulation, "Selection of Sequence of Mandatory Sanctions for Findings Made Pursuant to Section 179 of the Clean Air Act," was published on August 4, 1994 (59 FR 39832). This regulation establishes that, following section 179(a) findings, the 2-to-1 offset sanction on new or modified major stationary sources applies first, 18 months after the finding (except where EPA reverses the order through a separate rulemaking), unless EPA has determined that the State corrected the deficiency that prompted the finding. Highway sanctions apply second, six months after application of the offset sanction, unless EPA has determined that the State corrected the deficiency that prompted the finding.

Those two final rules (and this proposed policy statement, if made final) effectively supersede the joint DOT/EPA **Federal Register** notice of April 10, 1980 (45 FR 24692), "Federal Assistance Limitation Required by section 176(a) of the Clean Air Act." The EPA also expects to publish another regulation that would establish the sequence of sanctions applied under section 502(d)(2)(B) of the Clean Air Act relating to the EPA's permit program.

The proposed policy seeks to clarify the types of projects which are exempt from sanctions and to establish criteria that are uniformly applied when determining which programs and projects are exempt from highway sanctions. The proposed policy gives recognition to the respective roles and responsibilities of the FHWA and the EPA in applying funding and program/project approval limitations under section 179(b)(1), when the highway sanction is imposed under section 179(a) or section 110(m) of the CAA of 1990.

The policy would be nationally applicable. Although FHWA would consult with EPA to determine whether projects meet the exemption criteria set forth in this proposed policy, the final authority to determine whether a project is exempt from highway sanctions under the safety exemption criteria and seven congressionally authorized

activities is the responsibility of the Secretary of Transportation, as delegated to the FHWA. Other transportation related projects, not covered under the aforementioned exemptions, are not exempt unless the EPA Administrator, in consultation with the Secretary of Transportation, finds that they will improve air quality and not contribute to increased single occupancy vehicle (SOV) capacity.

A number of stand-alone projects which do not affect air quality but have other environmentally beneficial impacts are not specifically exempt from sanctions by the CAA. These projects may improve water quality, mitigate wetland impacts, provide landscaping, preserve historic structures, reduce noise, and have other aesthetic benefits. While the proposed policy statement would not exempt these projects, FHWA requests comments as to whether the following types of projects should be exempt from highway sanctions because of their de minimis impact on air quality. These activities are generally exempted from the CAA transportation conformity requirements (see 40 CFR §§ 51.460 and 93.134). Comments should include a discussion of the basis for the commentor's position in favor of, or against, such an exemption. FHWA would consult further with EPA before granting such an exemption.

The projects for which exemption status is being considered include:

1. Wetland mitigation;
2. Planting trees, shrubs, wildflowers;
3. Landscaping;
4. Purchase of scenic easements;
5. Billboard and other sign removal;
6. Historic preservation;
7. Transportation enhancements; and
8. Noise abatement.

#### **Requirements which Establish the Basis for Highway Sanctions Exemptions**

The Secretary of Transportation may make certain project approvals and award grants, even while the nonattainment area or State is under highway sanctions. As stated in section 179(b)(1) of the CAA, safety projects could go forward provided the Secretary of Transportation determines that, based on accident or other data, the principal purpose of the project is an improvement in safety to resolve a demonstrated safety problem and will likely result in a significant reduction in or avoidance of accidents.

In addition to safety projects, section 179(b)(1) specifically exempted seven activities from highway sanctions. Projects that the EPA Administrator, in consultation with the Secretary of Transportation, determines would

contribute to air quality improvement and would not encourage SOV capacity are also exempted. Programs and projects which are allowed to go forward under section 179(b)(1) should strive to avoid increasing or relocating emissions and congestion rather than simply reducing them.

#### **Safety Program/Project Requirements Under 23 U.S.C.**

Several programs have been established under title 23, U.S.C., expressly for the purpose of addressing safety objectives, either through programs targeted at driver behavior or safety projects intended to remediate structures, facilities, or prevent loss of human life. These programs include the:

(1) Highway Safety Improvement Program as defined under 23 CFR Part 924;

(2) the Highway Bridge Replacement and Rehabilitation Program as defined under 23 CFR Part 650, Subpart D; and

(3) grant programs whose principal purpose is to improve safety and which do not include any capital improvements, including all programs established in Chapter I or IV or 23 U.S.C. that are administered by the National Highway Traffic Safety Administration (NHTSA).

Additionally, the Transportation Management and Monitoring Systems defined under 23 CFR Part 500 (58 FR 63475, December 1, 1993), defined data requirements for six management systems and the Traffic Monitoring System. The requirements set forth in the management systems are being phased in and, with the exception of the pavement and bridge management systems, will be fully operational by October 1, 1996. The pavement and bridge management systems are required to be fully operational by October 1, 1997, and October 1, 1998, respectively. These requirements, as applied to the safety and bridge management systems, will yield additional information and data needed to support highway sanction exemptions as specified in section 179(b)(1) of the CAA. This information may be used to supplement existing data or, as it is developed, may improve existing data or information currently available.

Programs or projects stemming from the following provisions could be exempt on the basis of an established safety-related project need meeting section 179(b) requirements. Title 23 of the Code of Federal Regulations (April 1, 1994) sets forth the requirements for eligibility for Federal funding for projects under the Highway Safety Improvement Program (23 CFR Part 924) and the Highway Bridge Replacement and Rehabilitation Program (23 CFR Part