ORAL ARGUMENT NOT YET SCHEDULED

Case No. 17-1273

United States Court of Appeals for the District of Columbia Circuit

STATE OF NEW YORK, ET AL.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,

Respondents.

PETITION FOR REVIEW OF FINAL ACTION BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

ADDENDUM TO PETITIONERS' OPENING BRIEF

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5 USCS § 706

Current through PL 115-170, approved 5/9/18

United States Code Service - Titles 1 through 54 > TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES > PART I. THE AGENCIES GENERALLY > CHAPTER 7. JUDICIAL REVIEW

Notice

Part 1 of 3. You are viewing a very large document that has been divided into parts.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this *title [5 USCS §§ 556* and *557*] or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

History

(Sept. 6, 1966, *P.L. 89-554*, § 1, *80 Stat. 393*.)

Prior law and revision:

Derivation	U.S. Code	Revised Statutes and Statutes at Large
....	*5 USC Sec. 1009(e)*	June 11, 1946, ch 324, Sec. 10(e), *60 Stat. 243*.

42 USCS § 7407

Current through PL 115-170, approved 5/9/18

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 85. AIR POLLUTION PREVENTION AND CONTROL > PROGRAMS AND ACTIVITIES > AIR QUALITY AND EMISSION LIMITATIONS

§ 7407. Air quality control regions

(a) Responsibility of each State for air quality; submission of implementation plan. Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

(b) Designated regions. For purposes of developing and carrying out implementation plans under section 110 [*42 USCS § 7410*]--

(1) an air quality control region designated under this section before the date of enactment of the Clean Air Amendments of 1970 [enacted Dec. 31, 1970], or a region designated after such date under subsection (c), shall be an air quality control region; and

(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

(c) Authority of Administrator to designate regions; notification of Governors of affected States. The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970 [enacted Dec. 31, 1970], after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the Governors of the affected States of any designation made under this subsection.

(d) Designations.

(1) Designations generally.

(A) Submission by Governors of initial designations following promulgation of new or revised standards. By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section 109 [*42 USCS § 7409*], the Governor of each State shall (and at any other time the Governor of a State deems appropriate the Governor may) submit to the Administrator a list of all areas (or portions thereof) in the State, designating as--

(i) nonattainment, any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant,

(ii) attainment, any area (other than an area identified in clause (i)) that meets the national primary or secondary ambient air quality standard for the pollutant, or

(iii) unclassifiable, any area that cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant.

The Administrator may not require the Governor to submit the required list sooner than 120 days after promulgating a new or revised national ambient air quality standard.

(B) Promulgation by EPA of designations.

(i) Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) submitted under subparagraph (A) as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised national ambient air quality standard. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.

(ii) In making the promulgations required under clause (i), the Administrator may make such modifications as the Administrator deems necessary to the designations of the areas (or portions thereof) submitted under subparagraph (A) (including to the boundaries of such areas or portions thereof). Whenever the Administrator shall notify the State and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate. The Administrator shall give such notification no later than 120 days before the date the Administrator promulgates the designation, including any modification thereto. If the Governor fails to submit the list in whole or in part, as required under subparagraph (A), the Administrator shall promulgate the designation that the Administrator deems appropriate for any area (or portion thereof) not designated by the State.

(iii) If the Governor of any State, on the Governor's own motion, under subparagraph (A), submits a list of areas (or portions thereof) in the State designated as nonattainment, attainment, or unclassifiable, the Administrator shall act on such designations in accordance with the procedures under paragraph (3) (relating to redesignation).

(iv) A designation for an area (or portion thereof) made pursuant to this subsection shall remain in effect until the area (or portion thereof) is redesignated pursuant to paragraph (3) or (4).

(C) Designations by operation of law.

(i) Any area designated with respect to any air pollutant under the provisions of paragraph (1) (A), (B), or (C) of this subsection (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]) is designated, by operation of law, as a nonattainment area for such pollutant within the meaning of subparagraph (A)(i).

(ii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(E) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]) is designated by operation of law, as an attainment area for such pollutant within the meaning of subparagraph (A)(ii).

(iii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(D) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]) is designated, by operation of law, as an unclassifiable area for such pollutant within the meaning of subparagraph (A)(iii).

(2) Publication of designations and redesignations.

(A) The Administrator shall publish a notice in the Federal Register promulgating any designation under paragraph (1) or (5), or announcing any designation under paragraph (4), or promulgating any redesignation under paragraph (3).

(B) Promulgation or announcement of a designation under paragraph (1), (4) or (5) shall not be subject to the provisions of sections 553 through 557 of title 5 of the United States Code (relating to notice

and comment), except nothing herein shall be construed as precluding such public notice and comment whenever possible.

(3) Redesignation.

(A) Subject to the requirements of subparagraph (E), and on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate, the Administrator may at any time notify the Governor of any State that available information indicates that the designation of any area or portion of an area within the State or interstate area should be revised. In issuing such notification, which shall be public, to the Governor, the Administrator shall provide such information as the Administrator may have available explaining the basis for the notice.

(B) No later than 120 days after receiving a notification under subparagraph (A), the Governor shall submit to the Administrator such redesignation, if any, of the appropriate area (or areas) or portion thereof within the State or interstate area, as the Governor considers appropriate.

(C) No later than 120 days after the date described in subparagraph (B) (or paragraph (1)(B)(iii)), the Administrator shall promulgate the redesignation, if any, of the area or portion thereof, submitted by the Governor in accordance with subparagraph (B), making such modifications as the Administrator may deem necessary, in the same manner and under the same procedure as is applicable under clause (ii) of paragraph (1)(B), except that the phrase "60 days" shall be substituted for the phrase "120 days" in that clause. If the Governor does not submit, in accordance with subparagraph (B), a redesignation for an area (or portion thereof) identified by the Administrator under subparagraph (A), the Administrator shall promulgate such redesignation, if any, that the Administrator deems appropriate.

(D) The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State. Within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny such redesignation. The submission of a redesignation by a Governor shall not affect the effectiveness or enforceability of the applicable implementation plan for the State.

(E) The Administrator may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless--

(i) the Administrator determines that the area has attained the national ambient air quality standard;

(ii) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) [*42 USCS § 7410(k)*];

(iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A [*42 USCS § 7505a*]; and

(v) the State containing such area has met all requirements applicable to the area under section 110 and part D [*42 USCS § 7410* and *§§ 7501* et seq.].

(F) The Administrator shall not promulgate any redesignation of any area (or portion thereof) from nonattainment to unclassifiable.

(4) Nonattainment designations for ozone, carbon monoxide and particulate matter (PM-10).

(A) Ozone and carbon monoxide.

(i) Within 120 days after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], each Governor of each State shall submit to the Administrator a list

that designates, affirms or reaffirms the designation of, or redesignates (as the case may be), all areas (or portions thereof) of the Governor's State as attainment, nonattainment, or unclassifiable with respect to the national ambient air quality standards for ozone and carbon monoxide.

(ii) No later than 120 days after the date the Governor is required to submit the list of areas (or portions thereof) required under clause (i) of this subparagraph, the Administrator shall promulgate such designations, making such modifications as the Administrator may deem necessary, in the same manner, and under the same procedure, as is applicable under clause (ii) of paragraph (1)(B), except that the phrase "60 days" shall be substituted for the phrase "120 days" in that clause. If the Governor does not submit, in accordance with clause (i) of this subparagraph, a designation for an area (or portion thereof), the Administrator shall promulgate the designation that the Administrator deems appropriate.

(iii) No nonattainment area may be redesignated as an attainment area under this subparagraph.

(iv) Notwithstanding paragraph (1)(C)(ii) of this subsection, if an ozone or carbon monoxide nonattainment area located within a metropolitan statistical area or consolidated metropolitan statistical area (as established by the Bureau of the Census) is classified under part D of this *title [42 USCS §§ 7501* et seq.] as a Serious, Severe, or Extreme Area, the boundaries of such area are hereby revised (on the date 45 days after such classification) by operation of law to include the entire metropolitan statistical area or consolidated metropolitan statistical area, as the case may be, unless within such 45-day period the Governor (in consultation with State and local air pollution control agencies) notifies the Administrator that additional time is necessary to evaluate the application of clause (v). Whenever a Governor has submitted such a notice to the Administrator, such boundary revision shall occur on the later of the date 8 months after such classification or 14 months after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990] unless the Governor makes the finding referred to in clause (v), and the Administrator concurs in such finding, within such period. Except as otherwise provided in this paragraph, a boundary revision under this clause or clause (v) shall apply for purposes of any State implementation plan revision required to be submitted after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990].

(v) Whenever the Governor of a State has submitted a notice under clause (iv), the Governor, in consultation with State and local air pollution control agencies, shall undertake a study to evaluate whether the entire metropolitan statistical area or consolidated metropolitan statistical area should be included within the nonattainment area. Whenever a Governor finds and demonstrates to the satisfaction of the Administrator, and the Administrator concurs in such finding, that with respect to a portion of a metropolitan statistical area or consolidated metropolitan statistical area, sources in the portion do not contribute significantly to violation of the national ambient air quality standard, the Administrator shall approve the Governor's request to exclude such portion from the nonattainment area. In making such finding, the Governor and the Administrator shall consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport.

(B) PM-10 designations. By operation of law, until redesignation by the Administrator pursuant to paragraph (3)--

(i) each area identified in *52 Federal Register 29383* (Aug. 7, 1987) as a Group I area (except to the extent that such identification was modified by the Administrator before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]) is designated nonattainment for PM-10;

(ii) any area containing a site for which air quality monitoring data show a violation of the national ambient air quality standard for PM-10 before January 1, 1989 (as determined under part 50,

appendix K of title 40 of the Code of Federal Regulations) is hereby designated nonattainment for PM-10; and

(iii) each area not described in clause (i) or (ii) is hereby designated unclassifiable for PM-10.

Any designation for particulate matter (measured in terms of total suspended particulates) that the Administrator promulgated pursuant to this subsection (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]) shall remain in effect for purposes of implementing the maximum allowable increases in concentrations of particulate matter (measured in terms of total suspended particulates) pursuant to section 163(b) [*42 USCS § 7473(b)*], until the Administrator determines that such designation is no longer necessary for that purpose.

(5) Designations for lead. The Administrator may, in the Administrator's discretion at any time the Administrator deems appropriate, require a State to designate areas (or portions thereof) with respect to the national ambient air quality standard for lead in effect as of the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], in accordance with the procedures under subparagraphs (A) and (B) of paragraph (1), except that in applying subparagraph (B)(i) of paragraph (1) the phrase "2 years form the date of promulgation of the new or revised national ambient air quality standard" shall be replaced by the phrase "1 year from the date the Administrator notifies the State of the requirement to designate areas with respect to the standard for lead".

(6) Designations.

(A) Submission. Notwithstanding any other provision of law, not later than February 15, 2004, the Governor of each State shall submit designations referred to in paragraph (1) for the July 1997 PM[2.5] national ambient air quality standards for each area within the State, based on air quality monitoring data collected in accordance with any applicable Federal reference methods for the relevant areas.

(B) Promulgation. Notwithstanding any other provision of law, not later than December 31, 2004, the Administrator shall, consistent with paragraph (1), promulgate the designations referred to in subparagraph (A) for each area of each State for the July 1997 PM[2.5] national ambient air quality standards.

(7) Implementation plan for regional haze.

(A) In general. Notwithstanding any other provision of law, not later than 3 years after the date on which the Administrator promulgates the designations referred to in paragraph (6)(B) for a State, the State shall submit, for the entire State, the State implementation plan revisions to meet the requirements promulgated by the Administrator under section 169B(e)(1) [*42 USCS § 7492(e)(1)*] (referred to in this paragraph as "regional haze requirements").

(B) No preclusion of other provisions. Nothing in this paragraph precludes the implementation of the agreements and recommendations stemming from the Grand Canyon Visibility Transport Commission Report dated June 1996, including the submission of State implementation plan revisions by the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, or Wyoming by December 31, 2003, for implementation of regional haze requirements applicable to those States.".

(e) Redesignation of air quality control regions.

(1) Except as otherwise provided in paragraph (2), the Governor of each State is authorized, with the approval of the Administrator, to redesignate from time to time the air quality control regions within such State for purposes of efficient and effective air quality management. Upon such redesignation, the list under subsection (d) shall be modified accordingly.

(2) In the case of an air quality control region in a State, or part of such region, which the Administrator finds may significantly affect air pollution concentrations in another State, the Governor of the State in

which such region, or part of a region, is located may redesignate from time to time the boundaries of so much of such air quality control region as is located within such State only with the approval of the Administrator and with the consent of all Governors of all States which the Administrator determines may be significantly affected.

(3) No compliance date extension granted under section 113(d)(5) (relating to coal conversion) shall cease to be effective by reason of the regional limitation provided in section 113(d)(5) if the violation of such limitation is due solely to a redesignation of a region under this subsection.

History

(July 14, 1955, ch 360, Title I, Part A, § 107, as added Dec. 31, 1970, *P.L. 91-604*, § 4(a), *84 Stat. 1678*; Aug. 7, 1977, *P.L. 95-95*, Title I, § 103, *91 Stat. 687*; Nov. 15, 1990, *P.L. 101-549*, Title I, § 101(a), *104 Stat. 2399*; Jan. 23, 2004, *P.L. 108-199*, Div G, Title IV, § 425(a), *118 Stat. 417*.)

Annotations

Notes

References in text:

"Section 113(d)(5)", referred to in subsec. (c)(3), which appeared as *42 USCS § 7413(d)(5)*, was amended by Act Nov. 15, 1990, *P.L. 101-549*, Title VII, § 701, *104 Stat. 2672*, and as amended, no longer relates to final compliance orders.

Explanatory notes:

This section formerly appeared as *42 USCS § 1857c-2*.

Former § 107 of Act July 14, 1955 (Act July 14, 1955, ch 360, § 107[7]) was redesignated as § 111 of such Act by § 2 of Act Nov. 21, 1967, redesignated again as § 118 by Act Dec. 31, 1970, *P.L. 91-604*, and now appears as *42 USCS § 7418*.

Former § 107 of Act July 14, 1955, ch 360, as added Nov. 21, 1967, *P.L. 90-148*, § 2, *81 Stat. 490*, was repealed by Act Dec. 31, 1970, *P.L. 91-604*, § 4(a), *84 Stat. 1678*. The section provided for air quality control regions, criteria, and control techniques. Similar provisions appear in this section.

Amendments:

1977 . Act Aug. 7, 1977 (effective 8/7/77, as provided by § 406(d) of such Act, which appears as *42 USCS § 7401* note) added subsecs. (d) and (e).

1990 . Act Nov. 15, 1990 (effective on enactment, except as provided by § 711(b) of such Act, which appears as *42 USCS § 7401* note) substituted subsec. (d) for one which read:

"(d) List of noncomplying regions.

(1) For the purpose of transportation control planning, part D (relating to nonattainment), part C (relating to prevention of significant deterioration of air quality), and for other purposes, each State, within one hundred and twenty days after the date of enactment of the Clean Air Act Amendments of 1977, shall submit to the Administrator a list, together with a summary of the available information, identifying those air quality control regions, or portions thereof, established pursuant to this section in such State which on the date of enactment of the Clean Air Act Amendments of 1977--

42 USCS § 7409

Current through PL 115-170, approved 5/9/18

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 85. AIR POLLUTION PREVENTION AND CONTROL > PROGRAMS AND ACTIVITIES > AIR QUALITY AND EMISSION LIMITATIONS

§ 7409. National primary and secondary ambient air quality standards

(a) Promulgation.

(1) The Administrator--

(A) within 30 days after the date of enactment of the Clean Air Amendments of 1970 [enacted Dec. 31, 1970], shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date of enactment; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall be regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after the date of enactment of the Clean Air Amendments of 1970 [enacted Dec. 31, 1970], the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare.

(1) National primary ambient air quality standards, prescribed under subsection (a) shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) National primary ambient air quality standard for nitrogen dioxide. The Administrator shall, not later than one year after the date of the enactment of the Clean Air Act Amendments of 1977 [enacted Aug. 7, 1977], promulgate a national primary ambient air quality standard for NO[2] concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 108(c) [42 USCS § 7408(c)], he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions.

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 108 [*42 USCS § 7408*] and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 108 [*42 USCS § 7408*] and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2) (A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 108 [*42 USCS § 7408*] and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 108 [*42 USCS § 7408*] and subsection (b) of this section.

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

History

(July 14, 1955, ch 360, Title I, Part A, § 109, as added Dec. 31, 1970, *P.L. 91-604*, § 4(a); *84 Stat. 1679*; Aug. 7, 1977, *P.L. 95-95*, Title I, §§ 106, *91 Stat. 691*.)

Annotations

Notes

Explanatory notes:

This section formerly appeared as *42 USCS § 1857c-4*.

Former § 109 of Act July 14, 1955 (Act July 14, 1955, ch 360, § 109, as added Nov. 21, 1967, *P.L. 90-148*) was redesignated as § 116 of such Act by § 4(a) of Act Dec. 31, 1970, and appears as *42 USCS § 7416*.

Amendments:

1977 . Act Aug. 7, 1977 (effective 8/7/77, as provided by § 406(d) of such Act, which appears as *42 USCS § 7401* note) added subsecs. (c) and (d).

Other provisions:

42 USCS § 7410

Current through PL 115-170, approved 5/9/18

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 85. AIR POLLUTION PREVENTION AND CONTROL > PROGRAMS AND ACTIVITIES > AIR QUALITY AND EMISSION LIMITATIONS

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems.

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 [42 USCS § 7409] for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this Act shall be adopted by the State after reasonable notice and public hearing. Each such plan shall--

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to--

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D [42 USCS §§ 7470 et seq., 7501 et seq.];

(D) contain adequate provisions--

(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will--

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C [*42 USCS §§ 7470* et seq.] to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 126 and 115 [*42 USCS §§ 7426*, *7415*] (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128 [*42 USCS § 7428*], and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator--

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in section 303 [*42 USCS § 7603*] and adequate contingency plans to implement such authority;

(H) provide for revision of such plan--

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D [*42 USCS §§ 7501* et seq.] (relating to nonattainment areas);

(J) meet the applicable requirements of section 121 [*42 USCS § 7421*] (relating to consultation), section 127 [*42 USCS § 7427*] (relating to public notification), and part C [*42 USCS §§ 7470* et seq.] (relating to prevention of significant deterioration of air quality and visibility protection);

(K) provide for--

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover--

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V [42 USCS §§ 7661 et seq.]; and

(M) provide for consultation and participation by local political subdivisions affected by the plan.

(3) (A) [Repealed]

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this Act and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c), shall be required to revise an applicable implementation plan because one or more exemptions under section 118 [42 USCS § 7418] (relating to Federal facilities), enforcement orders under section 113(d), suspensions under section 110(f) or (g) [subsecs. (f) or (g) of this section] (relating to temporary energy or economic authority), orders under section 119 [42 USCS § 7419] (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under section 113(e) (relating to iron- and steel-producing operations) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, or extensions had been granted.

(4) [Repealed]

(5) (A) (i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under section 110(a) [42 USCS § 7410(a)] to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under section 110(c) [42 USCS § 7410(c)] respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term "indirect source" means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of section 110(c)(2)(D)(ii) [42 USCS § 7410(c)(2)(D)(ii)]), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this paragraph the term "indirect source review program" means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations--

(i) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term "transportation control measure" does not include any measure which is an "indirect source review program".

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 113(d) or section 119 (relating to primary nonferrous smelter orders) [42 USCS § 7419], the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

(b) Extension of period for submission of plans. The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c) Preparation and publication by Administrator of proposed regulations setting forth implementation plan; transportation regulations study and report; parking surcharge; suspension authority; plan implementation.

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator--

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under section 110(k)(1)(A) [42 USCS § 7410(k)(1)(A)], or

(B) disapproves a State implementation plan submission in whole or in part,

unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

(2) (A) [Repealed]

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this

subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) [Repealed]

(D) For purposes of this paragraph--

(i) The term "parking surcharge regulation" means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term "management of parking supply" shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term "preferential bus/carpool lane" shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after the date of enactment of this paragraph [enacted June 22, 1974] by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

(3) Upon application of the chief executive officer of any general purpose unit of local government, if the Administrator determines that such unit has adequate authority under State or local law, the Administrator may delegate to such unit the authority to implement and enforce within the jurisdiction of such unit any part of a plan promulgated under this subsection. Nothing in this paragraph shall prevent the Administrator from implementing or enforcing any applicable provision of a plan promulgated under this subsection.

(4) [Repealed]

(5) (A) Any measure in an applicable implementation plan which requires a toll or other charge for the use of a bridge located entirely within one city shall be eliminated from such plan by the Administrator upon application by the Governor of the State, which application shall include a certification by the Governor that he will revise such plan in accordance with subparagraph (B).

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after the date of the enactment of this subparagraph [enacted Aug. 7, 1977], be revised to include comprehensive measures to:

(i) establish, expand, or improve public transportation measures to meet basic transportation needs, as expeditiously as is practicable; and

(ii) implement transportation control measures necessary to attain and maintain national ambient air quality standards,

and such revised plan shall, for the purpose of implementing such comprehensive public transportation measures, include requirements to use (insofar as is necessary) Federal grants, State or local funds, or any combination of such grants and funds as may be consistent with the terms of the legislation providing such grants and funds. Such measures shall, as a substitute for the tolls or charges eliminated under subparagraph (A), provide for emissions reductions equivalent to the reductions which may reasonably be expected to be achieved through the use of the tolls or charges eliminated.

(C) Any revision of an implementation plan for purposes of meeting the requirements of subparagraph (B) shall be submitted in coordination with any plan revision required under part D [42 USCS §§ 7501 et seq.].

(d), (e) [Repealed]

(f) National or regional energy emergencies; determination by President.

(1) Upon application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity that--

(A) a temporary suspension of any part of the applicable implementation plan or of any requirement under section 411 (concerning excess emissions penalties or offsets) of title IV of the Act [42 USCS § 7651j] may be necessary, and

(B) other means of responding to the energy emergency may be inadequate.

Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan or of any requirement under section 411 (concerning excess emissions penalties or offsets) of title IV of the Act [42 USCS § 7651j] adopted by the State may be issued by the Governor of any State covered by the President's determination under the condition specified in paragraph (2) and may take effect immediately.

(2) A temporary emergency suspension under this subsection shall be issued to a source only if the Governor of such State finds that--

(A) there exists in the vicinity of such source a temporary energy emergency involving high levels of unemployment or loss of necessary energy supplies for residential dwellings; and

(B) such unemployment or loss can be totally or partially alleviated by such emergency suspension.

Not more than one such suspension may be issued for any source on the basis of the same set of circumstances or on the basis of the same emergency.

(3) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator, if any. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of paragraph (2).

(4) This subsection shall not apply in the case of a plan provision or requirement promulgated by the Administrator under subsection (c) of this section, but in any such case the President may grant a temporary emergency suspension for a four month period of any such provision or requirement if he makes the determinations and findings specified in paragraphs (1) and (2).

(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 119, as in effect before the date of the enactment of this paragraph [enacted Aug. 7, 1977] or section 113(d) of this Act, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(g) Governor's authority to issue temporary emergency suspensions.

(1) In the case of any State which has adopted and submitted to the Administrator a proposed plan revision which the State determines--

(A) meets the requirements of this section, and

(B) is necessary (i) to prevent the closing for one year or more of any source of air pollution, and (ii) to prevent substantial increases in unemployment which would result from such closing, and

which the Administrator has not approved or disapproved under this section within 12 months of submission of the proposed plan revision, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B) may not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved.

(2) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of this subsection.

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 119 as in effect before the date of the enactment of this paragraph [enacted Aug. 7, 1977], or under section 113(d) upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(h) Publication of comprehensive document for each State setting forth requirements of applicable implementation plan.

(1) Not later than 5 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], and every 3 years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents.

(2) The Administrator may promulgate such regulations as may be reasonably necessary to carry out the purpose of this subsection.

(i) Modification of requirements prohibited. Except for a primary nonferrous smelter order under section 119 [*42 USCS § 7419*], a suspension under section 110(f) or (g) [subsec. (f) or (g) of this section] (relating to emergency suspensions), an exemption under section 118 [*42 USCS § 7418*] (relating to certain Federal facilities), an order under section 113(d) (relating to compliance orders), a plan promulgation under section 110(c) [subsec. (c) of this section], or a plan revision under section 110(a)(3) [subsec. (a)(3) of this section], no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards. As a condition for issuance of any permit required under this title, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used will enable such source to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this Act.

(k) Environmental Protection Agency action on plan submissions.

(1) Completeness of plan submissions.

(A) Completeness criteria. Within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission

under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this Act.

(B) Completeness finding. Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

(C) Effect of finding of incompleteness. Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

(2) Deadline for action. Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

(3) Full and partial approval and disapproval. In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this Act. If a portion of the plan revision meets all the applicable requirements of this Act, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this Act until the Administrator approves the entire plan revision as complying with the applicable requirements of this Act.

(4) Conditional approval. The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

(5) Calls for plan revisions. Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in section 176A or section 184 [*42 USCS § 7506a* or *§ 7511c*], or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this Act to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D [*42 USCS §§ 7501* et seq.], unless such date has elapsed).

(6) Corrections. Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

(l) Plan revisions. Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 [42 USCS § 7501]), or any other applicable requirement of this Act.

(m) Sanctions. The Administrator may apply any of the sanctions listed in section 179(b) [42 USCS § 7509(b)] at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under paragraphs (1) through (4), respectively, of section 179(a) [42 USCS § 7509(a)] in relation to any plan or plan item (as that term is defined by the Administrator) required under this Act, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this Act relating to such plan or plan item are met. The Administrator shall, by rule, establish criteria for exercising his authority under the previous sentence with respect to any deficiency referred to in section 179(a) [42 USCS § 7509(a)] to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in section 179(a) [42 USCS § 7509(a)], such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

(n) Savings clauses.

(1) Existing plan provisions. Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to this section as in effect before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990] shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this Act.

(2) Attainment dates. For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State--

(A) in response to the promulgation or revision of a national primary ambient air quality standard in effect on the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], or

(B) in response to a finding of substantial inadequacy under subsection (a)(2) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) [enacted Nov. 15, 1990],

shall provide for attainment of the national primary ambient air quality standards within 3 years of the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990] or within 5 years of issuance of such finding of substantial inadequacy, whichever is later.

(3) Retention of construction moratorium in certain areas. In the case of an area to which, immediately before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]) applied by virtue of a finding of the Administrator that the State containing such area had not submitted an implementation plan meeting the requirements of section 172(b)(6) [42 USCS § 7502(b)(6)] (relating to establishment of a permit program) (as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]) or 172(a)(1) [42 USCS § 7502(a)(1)] (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of section 172(c)(5) [42 USCS § 7502(c)(5)] (relating to permit programs) or subpart 5 of part D [42 USCS §§ 7514 et seq.] (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.

(o) Indian tribes. If an Indian tribe submits an implementation plan to the Administrator pursuant to section 301(d) [42 USCS § 7601(d)], the plan shall be reviewed in accordance with the provisions for review set forth in this section for State plans, except as otherwise provided by regulation promulgated pursuant to section 301(d)(2) [42 USCS § 7601(d)(2)]. When such plan becomes effective in accordance with the regulations promulgated under section 301(d) [42 USCS § 7601(d)], the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(p) Reports. Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to emission reductions, vehicle miles traveled, congestion levels, and any other information the Administrator may deem necessary to assess the development[,] effectiveness, need for revision, or implementation of any plan or plan revision required under this Act.

History

(July 14, 1955, ch 360, Title I, Part A, § 110, as added Dec. 31, 1970, *P.L. 91-604*, § 4(a), *84 Stat. 1680*; June 22, 1974, *P.L. 93-319*, § 4, *88 Stat. 256*; Aug. 7, 1977, *P.L. 95-95*, Title I, §§ 107, 108, *91 Stat. 691*, 693; Nov. 16, 1977, *P.L. 95-190*, § 14(a)(1)-(6), *91 Stat. 1399*; July 17, 1981, *P.L. 97-23*, § 3; *95 Stat. 142*; Nov. 15, 1990, *P.L. 101-549*, Title I, §§ 101(b)-(d), 102(h), 107(c), 108(d), Title IV, § 412, *104 Stat. 2404*, 2422, 2464, 2466, 2634.)

Annotations

Notes

References in text:

The "Energy Supply and Environmental Coordination Act of 1974", referred to in subsec. (a)(3)(B), is Act June 22, 1974, *P.L. 93-319*, *88 Stat. 246*, which appears generally as *15 USCS §§ 791* et seq. For full classification of this Act, consult USCS Tables volumes.

"Section 113(d)", referred to in subsecs. (a)(3)(C), (6), (f)(5), (g)(3), and (i), which appears as *42 USCS § 7413(d)(5)*, was amended by Act Nov. 15, 1990, *P.L. 101-549*, Title VII, § 701, *104 Stat. 2672*, and as amended, no longer relates to final compliance orders and steel industry compliance extension.

"Section 119, as in effect before the date of the enactment of this paragraph", referred to in subsecs. (f)(5) and (g)(3), is § 119 of Act July 14, 1955, ch 360, Title I, as added June 22, 1974, *P.L. 93-319*, § 3, *88 Stat. 248*, which appeared as *42 USCS § 1857c-10* prior to the enactment of subsecs. (f)(5) and (g)(3) by Act Aug. 7, 1977, *P.L. 95-95*, § 107, *91 Stat. 691*. Section 112(b)(1) of Act Aug. 7, 1977 repealed § 119 of Act July 14, 1955 and provided that all references to such § 119 in any subsequent enactment which supersedes Act June 22, 1974 shall be construed to refer to § 113(d) of the Clean Air Act and to paragraph (5) thereof in particular, which appears as *42 USCS § 7413(d)(5)*. Section 117(b) of Act Aug. 7, 1977 added a new § 119 of Act July 14, 1955, which appears as *42 USCS § 7419*.

"This Act", referred to in this section, is Act July 14, 1955, ch 360, *69 Stat. 322*, as generally amended by Act Dec. 17, 1963, *P.L. 88-206*, *77 Stat. 392*, which appeared as *42 USCS §§ 1857* et seq. prior to its general amendment by Act Aug. 7, 1977, *P.L. 95-95*, *91 Stat. 685*, and now appears as *42 USCS §§ 7401* et seq.

"This title", referred to in this section, is Title I of the Clean Air Act and appears generally as *42 USCS §§ 7401* et seq. For full classification of such Title, consult USCS Tables volumes.

42 USCS § 7411

Current through PL 115-171, approved 5/9/18

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 85. AIR POLLUTION PREVENTION AND CONTROL > PROGRAMS AND ACTIVITIES > AIR QUALITY AND EMISSION LIMITATIONS

§ 7411. Standards for performance for new stationary sources

(a) Definitions. For purposes of this section:

(1) The term "standard of performance" means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

(2) The term "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in title II of this Act [42 USCS §§ 7621 et seq.] relating to nonroad engines shall be construed to apply to stationary internal combustion engines.

(4) The term "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term "existing source" means any stationary source other than a new source.

(7) The term "technological system of continuous emission reduction" means--

(A) a technological process for production or operation by any source which is inherently low-polluting or nonpolluting, or

(B) a technological system for continuous reduction of the pollution generated by a source before such pollution is emitted into the ambient air, including precombustion cleaning or treatment of fuels.

(8) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 [15 USCS § 792(a)] or any amendment thereto, or any subsequent enactment which supersedes such Act, or (B) which qualifies under section 113(d)(5)(A)(ii) of this Act shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.

(b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards.

(1) (A) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970 [enacted Dec. 31, 1970], publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment in causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B) Within one year after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one year after such publication, such standards with such modifications as he deems appropriate. The Administrator shall, at least every 8 years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard. Standards of performance or revisions thereof shall become effective upon promulgation. When implementation and enforcement of any requirement of this Act indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(5) Except as otherwise authorized under subsection (h), nothing in this section shall be construed to require, or to authorize the Administrator to require, any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

(6) The revised standards of performance required by enactment of subsection (a)(1)(A)(i) and (ii) shall be promulgated not later than one year after enactment of this paragraph [enacted Aug. 7, 1977]. Any new or modified fossil fuel fired stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.

(c) State implementation and enforcement of standards of performance.

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this Act to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(d) Standards of performance for existing sources; remaining useful life of source.

(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 110 [42 USCS § 7410] under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 108(a) [42 USCS § 7408(a)] or emitted from a source category which is regulated under section 112 [42 USCS § 7412] but (ii) to which a standard of performance under this section would apply if such

existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

(2) The Administrator shall have the same authority--

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 110(c) [42 USCS § 7410(c)] in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 113 and 114 [42 USCS §§ 7413 and 7414] with respect to an implementation plan.

In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.

(e) Prohibited acts. After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(f) New source standards of performance.

(1) For those categories of major stationary sources that the Administrator listed under subsection (b)(1)(A) before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990] and for which regulations had not been proposed by the Administrator by such date, the Administrator shall--

(A) propose regulations establishing standards of performance for at least 25 percent of such categories of sources within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990];

(B) propose regulations establishing standards of performance for at least 50 percent of such categories of sources within 4 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]; and

(C) propose regulations for the remaining categories of sources within 6 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990].

(2) In determining priorities for promulgating standards for categories of major stationary sources for the purpose of paragraph (1), the Administrator shall consider--

(A) the quantity of air pollutant emissions which each such category will emit, or will be designed to emit;

(B) the extent to which each such pollutant may reasonably be anticipated to endanger public health or welfare; and

(C) the mobility and competitive nature of each such category of sources and the consequent need for nationally applicable new source standards of performance.

(3) Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under this subsection, the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

(g) Revision of regulations.

(1) Upon application by the Governor of a State showing that the Administrator has failed to specify in regulations under subsection (f)(1) any category of major stationary sources required to be specified under such regulations, the Administrator shall revise such regulations to specify any such category.

(2) Upon application of the Governor of a State, showing that any category of stationary sources which is not included in the list under subsection (b)(1)(A) contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources), the Administrator shall revise such regulations to specify such category of stationary sources.

(3) Upon application of the Governor of a State showing that the Administrator has failed to apply properly the criteria required to be considered under subsection (f)(2), the Administrator shall revise the list under subsection (b)(1)(A) to apply properly such criteria.

(4) Upon application of the Governor of a State showing that--

(A) a new, innovative, or improved technology or process which achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources, and

(B) as a result of such technology or process, the new source standard of performance in effect under this section for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) has been adequately demonstrated,

the Administrator shall revise such standard of performance for such category accordingly.

(5) Unless later deadlines for action of the Administrator are otherwise prescribed under this section, the Administrator shall, not later than three months following the date of receipt of any application by a Governor of a State, either--

(A) find that such application does not contain the requisite showing and deny such application, or

(B) grant such application and take the action required under this subsection.

(6) Before taking any action required by subsection (f) or by this subsection, the Administrator shall provide notice and opportunity for public hearing.

(h) Design, equipment, work practice, or operational standard; alternative emission limitation.

(1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) For the purpose of this subsection, the phrase "not feasible to prescribe or enforce a standard of performance" means any situation in which the Administrator determines that (A) a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

(3) If after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of

any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Any standard promulgated under paragraph (1) shall be promulgated in terms of standard of performance whenever it becomes feasible to promulgate and enforce such standard in such terms.

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this Act (other than the provisions of subsection (a) and this subsection).

(i) Country elevators. Any regulations promulgated by the Administrator under this section applicable to grain elevators shall not apply to country elevators (as defined by the Administrator) which have a storage capacity of less than two million five hundred thousand bushels.

(j) Innovative technological systems of continuous emission reduction.

(1) (A) Any person proposing to own or operate a new source may request the Administrator for one or more waivers from the requirements of this section for such source or any portion thereof with respect to any air pollutant to encourage the use of an innovative technological system or systems of continuous emission reduction. The Administrator may, with the consent of the Governor of the State in which the source is to be located, grant a waiver under this paragraph, if the Administrator determines after notice and opportunity for public hearing, that--

(i) the proposed system or systems have not been adequately demonstrated,

(ii) the proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction than that required to be achieved under the standards of performance which would otherwise apply, or achieve at least an equivalent reduction at lower cost in terms of energy, economic, or nonair quality environmental impact,

(iii) the owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction, and

(iv) the granting of such waiver is consistent with the requirements of subparagraph (C).

In making any determination under clause (ii), the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards. In determining whether an unreasonable risk exists under clause (iii), the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under this section without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out clause (iii) of this subparagraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emitted, or was emitted in significantly lesser amounts without use of such system.

(B) A waiver under this paragraph shall be granted on such terms and conditions as the Administrator determines to be necessary to assure--

(i) emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

(ii) proper functioning of the technological system or systems authorized.

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 113 [42 USCS § 7413].

(C) The number of waivers granted under this paragraph with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such system will achieve the conditions specified in clauses (ii) and (iii) of subparagraph (A).

(D) A waiver under this paragraph shall extend to the sooner of--

(i) the date determined by the Administrator, after consultation with the owner or operator of the source, taking into consideration the design, installation, and capital cost of the technological system or systems being used, or

(ii) the date on which the Administrator determines that such system has failed to--

(I) achieve at least an equivalent continuous emission reduction to that required to be achieved under the standards of performance which would otherwise apply, or

(II) comply with the condition specified in paragraph (1)(A)(iii),

and that such failure cannot be corrected.

(E) In carrying out subparagraph (D)(i), the Administrator shall not permit any waiver for a source or portion thereof to extend beyond the date--

(i) seven years after the date on which any waiver is granted to such source or portion thereof, or

(ii) four years after the date on which such source or portion thereof commences operation, whichever is earlier.

(F) No waiver under this subsection shall apply to any portion of a source other than the portion on which the innovative technological system or systems of continuous emission reduction is used.

(2) (A) If a waiver under paragraph (1) is terminated under clause (ii) of paragraph (1)(D), the Administrator shall grant an extension of the requirements of this section for such source for such minimum period as may be necessary to comply with the applicable standard of performance under this section. Such period shall not extend beyond the date three years from the time such waiver is terminated.

(B) An extension granted under this paragraph shall set forth emission limits and a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practicable and include such measures as are necessary and practicable in the interim to minimize emissions. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section and section 113.

History

(July 14, 1955, ch 360, Title I, Part A, § 111, as added Dec. 31, 1970, P.L. 91-604, § 4(a), 84 Stat. 1683; Nov. 18, 1971, P.L. 92-157, Title III, § 302(f), 85 Stat. 464; Aug. 7, 1977, P.L. 95-95, Title I, § 109(a)-(d)(1), (e), (f), Title IV, § 401(b), 91 Stat. 697, 791; Nov. 16, 1977, P.L. 95-190, § 14(a)(7)-(9), 91 Stat. 1399; Nov. 9, 1978, P.L. 95-623, § 13(a), 92 Stat. 3457; Nov. 15, 1990, *P.L. 101-549*, Title I, § 108(e)-(g), Title III, § 302(a), (b), Title IV, § 403(a), *104 Stat. 2467*, 2574, 2631.)

Annotations

Notes

42 USCS § 7426

Current through PL 115-170, approved 5/9/18

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 85. AIR POLLUTION PREVENTION AND CONTROL > PROGRAMS AND ACTIVITIES > AIR QUALITY AND EMISSION LIMITATIONS

§ 7426. Interstate pollution abatement

(a) Written notice to all nearby States. Each applicable implementation plan shall--

(1) require each major proposed new (or modified) source--

(A) subject to part C [42 USCS §§ 7470 et seq.] (relating to significant deterioration of air quality) or

(B) which may significantly contribute to levels of air pollution in excess of the national ambient air quality standards in any air quality control region outside the State in which such source intends to locate (or make such modification),

to provide written notice to all nearby States the air pollution levels of which may be affected by such source at least sixty days prior to the date on which commencement of construction is to be permitted by the State providing notice, and

(2) identify all major existing stationary sources which may have the impact described in paragraph (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources not later than three months after the date of enactment of the Clean Air Act Amendments of 1977 [enacted Aug. 7, 1977].

(b) Petition for finding that major sources emit or would emit prohibited air pollutants. Any State or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(ii) [42 USCS § 7410(a)(2)(D)(ii)] or this section. Within 60 days after receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition.

(c) Violations; allowable continued operation. Notwithstanding any permit which may have been granted by the State in which the source is located (or intends to locate), it shall be a violation of this section and the applicable implementation plan in such State--

(1) for any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of the prohibition of section 110(a)(2)(D)(ii) [42 USCS § 7410(a)(2)(D)(ii)] or this section, or

(2) for any major existing source to operate more than three months after such finding has been made with respect to it.

The Administrator may permit the continued operation of a source referred to in paragraph (2) beyond the expiration of such three-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirements contained in section 110(a)(2)(D)(ii) [42 USCS § 7410(a)(2)(D)(ii)] as expeditiously as practicable, but in no case later than three years after the date of such finding. Nothing in the preceding sentence shall be construed to preclude any such source from

being eligible for an enforcement order under section 113(d) after the expiration of such period during which the Administrator has permitted continuous operation.

History

(July 14, 1955, ch 360, Title I, Part A, § 126, as added Aug. 7, 1977, *P.L. 95-95*, Title I, § 123, *91 Stat. 724*; Nov. 16, 1977, *P.L. 95-190*, § 14(a)(39), *91 Stat. 1401*; Nov. 15, 1990, *P.L. 101-549*, Title I, § 109(a), *104 Stat. 2469*.)

Annotations

Notes

References in text:

"Section 113(d)", referred to in subsec. (c), which appeared as *42 USCS § 7413(d)*, was amended by Act Nov. 15, 1990, *P.L. 101-549*, Title VII, § 701, *104 Stat. 2672*, and, as amended, no longer related to final compliance orders.

Effective date of section:

Act Aug. 7, 1977, *P.L. 95-95*, Title IV, § 406(d), *91 Stat. 795*, which appears as *42 USCS § 7401* note, provided that this section is effective on the date of enactment on Aug. 7, 1977.

Amendments:

1977 . Act Nov. 16, 1977, in subsec. (a)(1), substituted "(relating to significant deterioration of air quality)" for ", relating to significant deterioration of air quality,".

1990 . Act Nov. 15, 1990 (effective on enactment, except as provided by § 711(b) of such Act, which appears as *42 USCS § 7401* note), in subsec. (b), added "or group of stationary sources" and substituted "110(a)(2)(D)(ii) or this section" for "110(A)(2)(E)(i)"; in subsec. (c), in the introductory matter, inserted "this section and", and in para. (1) and the concluding matter, substituted "110(a)(2)(D)(ii) or this section" for "110(a)(2)(E)(i)" wherever appearing.

Other provisions:

Savings provisions. For savings provisions applicable to the amendments made to this section by Act Nov. 15, 1990, see Act Nov. 15, 1990, *P.L. 101-549*, Title VII, § 711(a), *104 Stat. 2684*, which appears as *42 USCS § 7401* note.

Case Notes

1. Generally
2. Grounds for abatement
3. Delay
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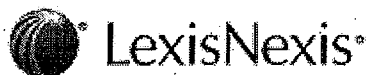
5. Due process
6. Procedural matters

1. Generally



42 USCS § 7506a

Current through PL 115-171, approved 5/9/18

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 85. AIR POLLUTION PREVENTION AND CONTROL > PROGRAMS AND ACTIVITIES > PLAN REQUIREMENTS FOR NONATTAINMENT AREAS > NONATTAINMENT AREAS IN GENERAL

§ 7506a. Interstate transport commissions

(a) Authority to establish interstate transport regions. Whenever, on the Administrator's own motion or by petition from the Governor of any State, the Administrator has reason to believe that the interstate transport of air pollutants from one or more States contributes significantly to a violation of a national ambient air quality standard in one or more other States, the Administrator may establish, by rule, a transport region for such pollutant that includes such States. The Administrator, on the Administrator's own motion or upon petition from the Governor of any State, or upon the recommendation of a transport commission established under subsection (b), may--

(1) add any State or portion of a State to any region established under this subsection whenever the Administrator has reason to believe that the interstate transport of air pollutants from such State significantly contributes to a violation of the standard in the transport region, or

(2) remove any State or portion of a State from the region whenever the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the attainment of the standard in any area in the region.

The Administrator shall approve or disapprove any such petition or recommendation within 18 months of its receipt. The Administrator shall establish appropriate proceedings for public participation regarding such petitions and motions, including notice and comment.

(b) Transport commissions.

(1) Establishment. Whenever the Administrator establishes a transport region under subsection (a), the Administrator shall establish a transport commission comprised of (at a minimum) each of the following members:

(A) The Governor of each State in the region or the designee of each such Governor.

(B) The Administrator or the Administrator's designee.

(C) The Regional Administrator (or the Administrator's designee) for each Regional Office for each Environmental Protection Agency Region affected by the transport region concerned.

(D) An air pollution control official representing each State in the region, appointed by the Governor.

Decisions of, and recommendations and requests to, the Administrator by each transport commission may be made only by a majority vote of all members other than the Administrator and the Regional Administrators (or designees thereof).

(2) Recommendations. The transport commission shall assess the degree of interstate transport of the pollutant or precursors to the pollutant throughout the transport region, assess strategies for mitigating the interstate pollution, and recommend to the Administrator such measures as the Commission

determines to be necessary to ensure that the plans for the relevant States meet the requirements of section 110(a)(2)(D) [*42 USCS § 7410(a)(2)(D)*]. Such commission shall not be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) Commission requests. A transport commission established under subsection (b) may request the Administrator to issue a finding under section 110(k)(5) [*42 USCS § 7410(k)(5)*] that the implementation plan for one or more of the States in the transport region is substantially inadequate to meet the requirements of section 110(a)(2)(D) [*42 USCS § 7410(a)(2)(D)*]. The Administrator shall approve, disapprove, or partially approve and partially disapprove such a request within 18 months of its receipt and, to the extent the Administrator approves such request, issue the finding under section 110(k)(5) [*42 USCS § 7410(k)(5)*] at the time of such approval. In acting on such request, the Administrator shall provide an opportunity for public participation and shall address each specific recommendation made by the commission. Approval or disapproval of such a request shall constitute final agency action within the meaning of section 307(b) [*42 USCS § 7607(b)*].

History

(July 14, 1955, ch 360, Title I, Part D, Subpart 1, § 176A, as added Nov. 15, 1990, *P.L. 101-549*, Title I, § 102(f)(1), *104 Stat. 2419*.)

Annotations

Notes

Effective date of section:

This section is effective on enactment, except as provided by § 711(b) of Title VII of Act Nov. 15, 1990, *P.L. 101-549*, *104 Stat. 2684*, which appears as *42 USCS § 7401* note.

Other provisions:

Savings provisions. For savings provisions applicable to the enactment of this section by Act Nov. 15, 1990, see Act Nov. 15, 1990, *P.L. 101-549*, Title VII, § 711(a), *104 Stat. 2684*, which appears as *42 USCS § 7401* note.

Research References & Practice Aids

Related Statutes & Rules:

This section is referred to in *42 USCS §§ 7406*, *7410*, *7511c*.

Am Jur:

61B Am Jur 2d, Pollution Control §§ 178, *529*, *530*.

Texts:

3 Environmental Law Practice Guide (Matthew Bender), ch 17, Clean Air Act § 17.02.

Law Review Articles:

Brooks. Big Oil, Big Consequences, and the Big Unknown: Exploring the Legal, Regulatory, and Environmental Impact of the Gulf Oil Spill: The Gulf Oil Spill: The Road Not Taken. *74 Alb L Rev 489, 2010*/2011.

Hiser. Clean Air Symposium: Air Quality Permitting: An Increasingly Limited Tool for a Sustainable Future. *43 Ariz St LJ 761,* Fall 2011.

Reitze. Clean Air Symposium: The Intersection of Climate Change and Clean Air Act Stationary Source Programs. *43 Ariz St LJ 901,* Fall 2011.

Sautter; Littvay. Environmental Judicial Interpretation and Agency Review: An Empirical Investigation of Judicial Decision-Making in the Clean Water Act and the Clean Air Act. *19 Buff Envt'l LJ 269.*

Latham; Schwartz; Appel. The Intersection of Tort and Environmental Law: Where the Twains Should Meet and Depart. *80 Fordham L Rev 737,* November 2011.

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§ 7511. Classifications and attainment dates

(a) Classification and attainment dates for 1989 nonattainment areas.

(1) Each area designated nonattainment for ozone pursuant to section 107(d) [42 USCS § 7407(d)] shall be classified at the time of such designation, under table 1, by operation of law, as a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before the date of the enactment of the Clean Air Act Amendments of 1990. For each area classified under this subsection, the primary standard attainment date for ozone shall be as expeditiously as practicable but not later than the date provided in table 1.

TABLE 1

Area class	Design value*	Primary standard attainment date**
Marginal	0.121 up to 0.138	3 years after enactment
Moderate	0.138 up to 0.160	6 years after enactment
Serious	0.160 up to 0.180	9 years after enactment
Severe	0.180 up to 0.280	15 years after enactment
Extreme	0.280 and above	20 years after enactment

*The design value is measured in parts per million (ppm).

**The primary standard attainment date is measured from the date of the enactment of the Clean Air Amendments of 1990.

(2) Notwithstanding table 1, in the case of a severe area with a 1988 ozone design value between 0.190 and 0.280 ppm, the attainment date shall be 17 years (in lieu of 15 years) after the date of the enactment of the Clean Air Amendments of 1990.

(3) At the time of publication of the notice under section 107(d)(4) [42 USCS § 7407(d)(4)] (relating to area designations) for each ozone nonattainment area, the Administrator shall publish a notice announcing the classification of such ozone nonattainment area. The provisions of section 172(a)(1)(B) [42 USCS § 7502(a)(1)(B)] (relating to lack of notice and comment and judicial review) shall apply to such classification.

(4) If an area classified under paragraph (1) (Table 1) would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after the initial classification, by the procedure required under paragraph (3), adjust the classification to place the area in such other category. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

(5) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date specified in table 1 of paragraph (1) of this subsection if--

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

(b) New designations and reclassifications.

(1) New designations to nonattainment. Any area that is designated attainment or unclassifiable for ozone under section 107(d)(4) [42 USCS § 7407(d)(4)], and that is subsequently redesignated to nonattainment for ozone under section 107(d)(3) [42 USCS § 7407(d)(3)], shall, at the time of the redesignation, be classified by operation of law in accordance with table 1 under subsection (a). Upon its classification, the area shall be subject to the same requirements under section 110, subpart 1 of this part, and this subpart [42 USCS §§ 7410, 7501 et seq., 7511 et seq.] that would have applied had the area been so classified at the time of the notice under subsection (a)(3), except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between the date of the enactment of the Clean Air Act Amendments of 1990 and the date the area is classified under this paragraph.

(2) Reclassification upon failure to attain.

(A) Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of--

(i) the next higher classification for the area, or

(ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

(B) The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

(3) Voluntary reclassification. The Administrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with table 1 of subsection (a) to a higher classification. The Administrator shall publish a notice in the Federal Register of any such request and of action by the Administrator granting the request.

(4) Failure of severe areas to attain standard.

(A) If any Severe Area fails to achieve the national primary ambient air quality standard for ozone by the applicable attainment date (including any extension thereof), the fee provisions under section 185 [*42 USCS § 7511c*] shall apply within the area, the percent reduction requirements of section 182(c)(2)(B) and (C) [*42 USCS § 7511a(c)(2)(B)*, (C)] (relating to reasonable further progress demonstration and NO[X] control) shall continue to apply to the area, and the State shall demonstrate that such percent reduction has been achieved in each 3-year interval after such failure until the standard is attained. Any failure to make such a demonstration shall be subject to the sanctions provided under this part [*42 USCS §§ 7501* et seq.].

(B) In addition to the requirements of subparagraph (A), if the ozone design value for a Severe Area referred to in subparagraph (A) is above 0.140 ppm for the year of the applicable attainment date, or if the area has failed to achieve its most recent milestone under section 182(g) [*42 USCS § 7511a(g)*], the new source review requirements applicable under this subpart [*42 USCS §§ 7511* et seq.] in Extreme Areas shall apply in the area and the term [terms] "major source" and "major stationary source" shall have the same meaning as in Extreme Areas.

(C) In addition to the requirements of subparagraph (A) for those areas referred to in subparagraph (A) and not covered by subparagraph (B), the provisions referred to in subparagraph (B) shall apply after 3 years from the applicable attainment date unless the area has attained the standard by the end of such 3-year period.

(D) If, after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator modifies the method of determining compliance with the national primary ambient air quality standard, a design value or other indicator comparable to 0.140 in terms of its relationship to the standard shall be used in lieu of 0.140 for purposes of applying the provisions of subparagraphs (B) and (C).

(c) References to terms.

(1) Any reference in this subpart [*42 USCS §§ 7511* et seq.] to a "Marginal Area", a "Moderate Area", a "Serious Area", a "Severe Area", or an "Extreme Area" shall be considered a reference to a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area as respectively classified under this section.

(2) Any reference in this subpart [*42 USCS §§ 7511* et seq.] to "next higher classification" or comparable terms shall be considered a reference to the classification related to the next higher set of design values in table 1.

History

42 USCS § 7511a

Current through PL 115-171, approved 5/9/18

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 85. AIR POLLUTION PREVENTION AND CONTROL > PROGRAMS AND ACTIVITIES > PLAN REQUIREMENTS FOR NONATTAINMENT AREAS > ADDITIONAL PROVISIONS FOR OZONE NONATTAINMENT AREAS

§ 7511a. Plan submissions and requirements

(a) Marginal areas. Each State in which all or part of a Marginal Area is located shall, with respect to the Marginal Area (or portion thereof, to the extent specified in this subsection), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection except to the extent the State has made such submissions as of the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990].

(1) Inventory. Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3) [42 USCS § 7502(c)(3)], in accordance with guidance provided by the Administrator.

(2) Corrections to the State implementation plan. Within the periods prescribed in this paragraph, the State shall submit a revision to the State implementation plan that meets the following requirements--

(A) Reasonably available control technology corrections. For any Marginal Area (or, within the Administrator's discretion, portion thereof) the State shall submit, within 6 months of the date of classification under section 181(a) [42 USCS § 7511(a)], a revision that includes such provisions to correct requirements in (or add requirements to) the plan concerning reasonably available control technology as were required under section 172(b) [42 USCS § 7502(b)] (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]), as interpreted in guidance issued by the Administrator under section 108 [42 USCS § 7408] before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990].

(B) Savings clause for vehicle inspection and maintenance.

(i) For any Marginal Area (or, within the Administrator's discretion, portion thereof), the plan for which already includes, or was required by section 172(b)(11)(B) [42 USCS § 7502(b)(11)(B)] (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]) to have included, a specific schedule for implementation of a vehicle emission control inspection and maintenance program, the State shall submit, immediately after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], a revision that includes any provisions necessary to provide for a vehicle inspection and maintenance program of no less stringency than that of either the program defined in House Report Numbered 95-294, 95th Congress, 1st Session, 281-291 (1977) [unclassified] as interpreted in guidance of the Administrator issued pursuant to section 172(b)(11)(B) [42 USCS § 7502(b)(11)(B)] (as in effect immediately before the date of the

enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]) or the program already included in the plan, whichever is more stringent.

(ii) Within 12 months after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], the Administrator shall review, revise, update, and republish in the Federal Register the guidance for the States for motor vehicle inspection and maintenance programs required by this Act, taking into consideration the Administrator's investigations and audits of such program. The guidance shall, at a minimum, cover the frequency of inspections, the types of vehicles to be inspected (which shall include leased vehicles that are registered in the nonattainment area), vehicle maintenance by owners and operators, audits by the State, the test method and measures, including whether centralized or decentralized, inspection methods and procedures, quality of inspection, components covered, assurance that a vehicle subject to a recall notice from a manufacturer has complied with that notice, and effective implementation and enforcement, including ensuring that any retesting of a vehicle after a failure shall include proof of corrective action and providing for denial of vehicle registration in the case of tampering or misfueling. The guidance which shall be incorporated in the applicable State implementation plans by the States shall provide the States with continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer. No later than 2 years after the Administrator promulgates regulations under section 202(m)(3) [42 USCS § 7521(m)(3)] (relating to emission control diagnostics), the State shall submit a revision to such program to meet any requirements that the Administrator may prescribe under that section.

(C) Permit programs. Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], the State shall submit a revision that includes each of the following:

(i) Provisions to require permits, in accordance with sections 172(c)(5) and 173 [42 USCS §§ 7502(c)(5), 7503], for the construction and operation of each new or modified major stationary source (with respect to ozone) to be located in the area.

(ii) Provisions to correct requirements in (or add requirements to) the plan concerning permit programs as were required under section 172(b)(6) [42 USCS § 7502(b)(6)] (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]), as interpreted in regulations of the Administrator promulgated as of the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990].

(3) Periodic inventory.

(A) General requirement. No later than the end of each 3-year period after submission of the inventory under paragraph (1) until the area is redesignated to attainment, the State shall submit a revised inventory meeting the requirements of subsection (a)(1).

(B) Emissions statements.

(i) Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], the State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first such statement shall be submitted within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

(ii) The State may waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under subparagraphs [subparagraph] (1) or (3)(A), provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

(4) General offset requirement. For purposes of satisfying the emission offset requirements of this part [42 USCS §§ 7501 et seq.], the ratio of total emission reductions of volatile organic compounds to total increased emissions of such air pollutant shall be at least 1.1 to 1.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area. Section 172(c)(9) [42 USCS § 7502(c)(9)] (relating to contingency measures) shall not apply to Marginal Areas.

(b) Moderate areas. Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area, make the submissions described under subsection (a) (relating to Marginal Areas), and shall also submit the revisions to the applicable implementation plan described under this subsection.

(1) Plan provisions for reasonable further progress.

(A) General rule.

(i) By no later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], the State shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions, within 6 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], of at least 15 percent from baseline emissions, accounting for any growth in emissions after the year in which the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990] are enacted. Such plan shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone by the attainment date applicable under this Act. This subparagraph shall not apply in the case of oxides of nitrogen for those areas for which the Administrator determines (when the Administrator approves the plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment.

(ii) A percentage less than 15 percent may be used for purposes of clause (i) in the case of any State which demonstrates to the satisfaction of the Administrator that--

(I) new source review provisions are applicable in the nonattainment areas in the same manner and to the same extent as required under subsection (e) in the case of Extreme Areas (with the exception that, in applying such provisions, the terms "major source" and "major stationary source" shall include (in addition to the sources described in section 302 [42 USCS § 7602]) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 5 tons per year of volatile organic compounds);

(II) reasonably available control technology is required for all existing major sources (as defined in subclause (I)); and

(III) the plan reflecting a lesser percentage than 15 percent includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To qualify for a lesser percentage under this clause, a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are

achieved in practice by sources in the same source category in nonattainment areas of the next higher category.

(B) Baseline emissions. For purposes of subparagraph (A), the term "baseline emissions" means the total amount of actual VOC or NO[X]emissions from all anthropogenic sources in the area during the calendar year of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], excluding emissions that would be eliminated under the regulations described in clauses (i) and (ii) of subparagraph (D).

(C) General rule for creditability of reductions. Except as provided under subparagraph (D), emissions reductions are creditable toward the 15 percent required under subparagraph (A) to the extent they have actually occurred, as of 6 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under title V [*42 USCS §§ 7661* et seq.].

(D) Limits on creditability of reductions. Emission reductions from the following measures are not creditable toward the 15 percent reductions required under subparagraph (A):

(i) Any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990.

(ii) Regulations concerning Reid Vapor Pressure promulgated by the Administrator by the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990] or required to be promulgated under section 211(h) [*42 USCS § 7545(h)*].

(iii) Measures required under subsection (a)(2)(A) (concerning corrections to implementation plans prescribed under guidance by the Administrator).

(iv) Measures required under subsection (a)(2)(B) to be submitted immediately after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990] (concerning corrections to motor vehicle inspection and maintenance programs).

(2) Reasonably available control technology. The State shall submit a revision to the applicable implementation plan to include provisions to require the implementation of reasonably available control technology under section 172(c)(1) [*42 USCS § 7502(c)(1)*] with respect to each of the following:

(A) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990] and the date of attainment.

(B) All VOC sources in the area covered by any CTG issued before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990].

(C) All other major stationary sources of VOCs that are located in the area.

Each revision described in subparagraph (A) shall be submitted within the period set forth by the Administrator in issuing the relevant CTG document. The revisions with respect to sources described in subparagraphs (B) and (C) shall be submitted by 2 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], and shall provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.

(3) Gasoline vapor recovery.

(A) General rule. Not later than 2 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], the State shall submit a revision to the applicable implementation plan to require all owners or operators of gasoline dispensing systems to install and operate, by the date prescribed under subparagraph (B), a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. The Administrator shall issue guidance as

appropriate as to the effectiveness of such system. This subparagraph shall apply only to facilities which sell more than 10,000 gallons of gasoline per month (50,000 gallons per month in the case of an independent small business marketer of gasoline as defined in section 325 [42 USCS § 7625(a)]).

(B) Effective date. The date required under subparagraph (A) shall be--

(i) 6 months after the adoption date, in the case of gasoline dispensing facilities for which construction commenced after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990];

(ii) one year after the adoption date, in the case of gasoline dispensing facilities which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before the adoption date; or

(iii) 2 years after the adoption date, in the case of all other gasoline dispensing facilities.

Any gasoline dispensing facility described under both clause (i) and clause (ii) shall meet the requirements of clause (i).

(C) Reference to terms. For purposes of this paragraph, any reference to the term "adoption date" shall be considered a reference to the date of adoption by the State of requirements for the installation and operation of a system for gasoline vapor recovery of emissions from the fueling of motor vehicles.

(4) Motor vehicle inspection and maintenance. For all Moderate Areas, the State shall submit, immediately after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], a revision to the applicable implementation plan that includes provisions necessary to provide for a vehicle inspection and maintenance program as described in subsection (a)(2)(B) (without regard to whether or not the area was required by section 172(b)(11)(B) [42 USCS § 7502(b)(11)(B)] (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]) to have included a specific schedule for implementation of such a program).

(5) General offset requirement. For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase [increased] emissions of such air pollutant shall be at least 1.15 to 1.

(c) Serious areas. Except as otherwise specified in paragraph (4), each State in which all or part of a Serious Area is located shall, with respect to the Serious Area (or portion thereof, to the extent specified in this subsection), make the submissions described under subsection (b) (relating to Moderate Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Serious Area, the terms "major source" and "major stationary source" include (in addition to the sources described in section 302 [42 USCS § 7602]) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds.

(1) Enhanced monitoring. In order to obtain more comprehensive and representative data on ozone air pollution, not later than 18 months after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990] the Administrator shall promulgate rules, after notice and public comment, for enhanced monitoring of ozone, oxides of nitrogen, and volatile organic compounds. The rules shall, among other things, cover the location and maintenance of monitors. Immediately following the promulgation of rules by the Administrator relating to enhanced monitoring, the State shall commence such actions as may be necessary to adopt and implement a program based on such rules, to improve monitoring for ambient concentrations of ozone, oxides of nitrogen and volatile organic compounds and to improve monitoring of emissions of oxides of nitrogen and volatile organic compounds. Each State implementation plan for the area shall contain measures to improve the ambient monitoring of such air pollutants.

(2) Attainment and reasonable further progress demonstrations. Within 4 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], the State shall submit a revision to the applicable implementation plan that includes each of the following:

(A) Attainment demonstration. A demonstration that the plan, as revised, will provide for attainment of the ozone national ambient air quality standard by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(B) Reasonable further progress demonstration. A demonstration that the plan, as revised, will result in VOC emissions reductions from the baseline emissions described in subsection (b)(1)(B) equal to the following amount averaged over each consecutive 3-year period beginning 6 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], until the attainment date:

(i) at least 3 percent of baseline emissions each year; or

(ii) an amount less than 3 percent of such baseline emissions each year, if the State demonstrates to the satisfaction of the Administrator that the plan reflecting such lesser amount includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To lessen the 3 percent requirement under clause (ii), a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. Any determination to lessen the 3 percent requirement shall be reviewed at each milestone under section 182(g) [subsec :(g) of this section] and revised to reflect such new measures (if any) achieved in practice by sources in the same category in any State, allowing a reasonable time to implement such measures. The emission reductions described in this subparagraph shall be calculated in accordance with subsection (b)(1) (C) and (D) (concerning creditability of reductions). The reductions creditable for the period beginning 6 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], shall include reductions that occurred before such period, computed in accordance with subsection (b)(1), that exceed the 15-percent amount of reductions required under subsection (b)(1)(A).

(C) NO[X] control. The revision may contain, in lieu of the demonstration required under subparagraph (B), a demonstration to the satisfaction of the Administrator that the applicable implementation plan, as revised, provides for reductions of emissions of VOC's and oxides of nitrogen (calculated according to the creditability provisions of subsection (b)(1)(C) and (D)), that would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions required under subparagraph (B). Within 1 year after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], the Administrator shall issue guidance concerning the conditions under which NO[X] control may be substituted for VOC control or may be combined with VOC control in order to maximize the reduction in ozone air pollution. In accord with such guidance, a lesser percentage of VOCs may be accepted as an adequate demonstration for purposes of this subsection.

(3) Enhanced vehicle inspection and maintenance program.

(A) Requirement for submission. Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], the State shall submit a revision to the applicable implementation plan to provide for an enhanced program to reduce hydrocarbon emissions and NO[X] emissions from in-use motor vehicles registered in each urbanized area (in the nonattainment area), as defined by the Bureau of the Census, with a 1980 population of 200,000 or more.

(B) Effective date of State programs; guidance. The State program required under subparagraph (A) shall take effect no later than 2 years from the date of the enactment of the Clean Air Act

Amendments of 1990 [enacted Nov. 15, 1990], and shall comply in all respects with guidance published in the Federal Register (and from time to time revised) by the Administrator for enhanced vehicle inspection and maintenance programs. Such guidance shall include--

(i) a performance standard achievable by a program combining emission testing, including on-road emission testing, with inspection to detect tampering with emission control devices and misfueling for all light-duty vehicles and all light- duty trucks subject to standards under section 202 [*42 USCS § 7521*]; and

(ii) program administration features necessary to reasonably assure that adequate management resources, tools, and practices are in place to attain and maintain the performance standard.

Compliance with the performance standard under clause (i) shall be determined using a method to be established by the Administrator.

(C) State program. The State program required under subparagraph (A) shall include, at a minimum, each of the following elements--

(i) Computerized emission analyzers, including on-road testing devices.

(ii) No waivers for vehicles and parts covered by the emission control performance warranty as provided for in section 207(b) [*42 USCS § 7541(b)*] unless a warranty remedy has been denied in writing, or for tampering-related repairs.

(iii) In view of the air quality purpose of the program, if, for any vehicle, waivers are permitted for emissions-related repairs not covered by warranty, an expenditure to qualify for the waiver of an amount of $ 450 or more for such repairs (adjusted annually as determined by the Administrator on the basis of the Consumer Price Index in the same manner as provided in title V [*42 USCS §§ 7661* et seq.]).

(iv) Enforcement through denial of vehicle registration (except for any program in operation before the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990] whose enforcement mechanism is demonstrated to the Administrator to be more effective than the applicable vehicle registration program in assuring that noncomplying vehicles are not operated on public roads).

(v) Annual emission testing and necessary adjustment, repair, and maintenance, unless the State demonstrates to the satisfaction of the Administrator that a biennial inspection, in combination with other features of the program which exceed the requirements of this Act, will result in emission reductions which equal or exceed the reductions which can be obtained through such annual inspections.

(vi) Operation of the program on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective. An electronically connected testing system, a licensing system, or other measures (or any combination thereof) may be considered, in accordance with criteria established by the Administrator, as equally effective for such purposes.

(vii) Inspection of emission control diagnostic systems and the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems.

Each State shall biennially prepare a report to the Administrator which assesses the emission reductions achieved by the program required under this paragraph based on data collected during inspection and repair of vehicles. The methods used to assess the emission reductions shall be those established by the Administrator.

(4) Clean-fuel vehicle programs.

(A) Except to the extent that substitute provisions have been approved by the Administrator under subparagraph (B), the State shall submit to the Administrator, within 42 months of the date of the

enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], a revision to the applicable implementation plan for each area described under part C of title II [42 USCS §§ 7581 et seq.] to include such measures as may be necessary to ensure the effectiveness of the applicable provisions of the clean-fuel vehicle program prescribed under part C of title II [42 USCS §§ 7581 et seq.], including all measures necessary to make the use of clean alternative fuels in clean-fuel vehicles (as defined in part C of title II [42 USCS §§ 7581 et seq.]) economic from the standpoint of vehicle owners. Such a revision shall also be submitted for each area that opts into the clean fuel-vehicle program as provided in part C of title II [42 USCS §§ 7581 et seq.].

(B) The Administrator shall approve, as a substitute for all or a portion of the clean-fuel vehicle program prescribed under part C of title II [42 USCS §§ 7581 et seq.], any revision to the relevant applicable implementation plan that in the Administrator's judgment will achieve long-term reductions in ozone-producing and toxic air emissions equal to those achieved under part C of title II [42 USCS §§ 7581 et seq.], or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute. The Administrator may approve such revision only if it consists exclusively of provisions other than those required under this Act for the area. Any State seeking approval of such revision must submit the revision to the Administrator within 24 months of the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]. The Administrator shall approve or disapprove any such revision within 30 months of the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]. The Administrator shall publish the revision submitted by a State in the Federal Register upon receipt. Such notice shall constitute a notice of proposed rulemaking on whether or not to approve such revision and shall be deemed to comply with the requirements concerning notices of proposed rulemaking contained in sections 553 through 557 of title 5 of the United States Code (related to notice and comment). Where the Administrator approves such revision for any area, the State need not submit the revision required by subparagraph (A) for the area with respect to the portions of the Federal clean-fuel vehicle program for which the Administrator has approved the revision as a substitute.

(C) If the Administrator determines, under section 179 [42 USCS § 7509], that the State has failed to submit any portion of the program required under subparagraph (A), then, in addition to any sanctions available under section 179 [42 USCS § 7509], the State may not receive credit, in any demonstration of attainment or reasonable further progress for the area, for any emission reductions from implementation of the corresponding aspects of the Federal clean-fuel vehicle requirements established in part C of title II [42 USCS §§ 7581 et seq.].

(5) Transportation control.

[(A)] Beginning 6 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990] and each third year thereafter, the State shall submit a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's demonstration of attainment. Where such parameters and emissions levels exceed the levels projected for purposes of the area's attainment demonstration, the State shall within 18 months develop and submit a revision of the applicable implementation plan that includes a transportation control measures program consisting of measures from, but not limited to, section 108(f) [42 USCS § 7408(f)] that will reduce emissions to levels that are consistent with emission levels projected in such demonstration. In considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 108(e) [42 USCS § 7408(e)] and with the requirements of section 174(b) [42 USCS § 7504(b)] and shall include implementation and funding schedules that achieve expeditious emissions reductions in accordance with implementation plan projections.

(6) De minimis rule. The new source review provisions under this part shall ensure that increased emissions of volatile organic compounds resulting from any physical change in, or change in the

method of operation of, a stationary source located in the area shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this Act unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.

(7) Special rule for modifications of sources emitting less than 100 tons. In the case of any major stationary source of volatile organic compounds located in the area (other than a source which emits or has the potential to emit 100 tons or more of volatile organic compounds per year), whenever any change (as described in section 111(a)(4) [*42 USCS § 7411(a)(4)*]) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 172(c)(5) and section 173(a) [*42 USCS §§ 7502(c)(5)*, *7503(a)*], except that such increase shall not be considered a modification for such purposes if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds concerned from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such election, such change shall be considered a modification for such purposes, but in applying section 173(a)(2) [*42 USCS § 7503(a)(2)*] in the case of any such modification, the best available control technology (BACT), as defined in section 169 [*42 USCS § 7479*], shall be substituted for the lowest achievable emission rate (LAER). The Administrator shall establish and publish policies and procedures for implementing the provisions of this paragraph.

(8) Special rule for modifications of sources emitting 100 tons or more. In the case of any major stationary source of volatile organic compounds located in the area which emits or has the potential to emit 100 tons or more of volatile organic compounds per year, whenever any change (as described in section 111(a)(4) [*42 USCS § 7411(a)(4)*]) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 172(c)(5) and section 173(a) [*42 USCS §§ 7502(c)(5)*, *7503(a)*], except that if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, the requirements of section 173(a)(2) [*42 USCS § 7503(a)(2)*] (concerning the lowest achievable emission rate (LAER)) shall not apply.

(9) Contingency provisions. In addition to the contingency provisions required under section 172(c)(9) [*42 USCS § 7502(c)(9)*], the plan revision shall provide for the implementation of specific measures to be undertaken if the area fails to meet any applicable milestone. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator upon a failure by the State to meet the applicable milestone.

(10) General offset requirement. For purposes of satisfying the emission offset requirements of this part [*42 USCS §§ 7501* et seq.], the ratio of total emission reductions of volatile organic compounds to total increase emissions of such air pollutant shall be at least 1.2 to 1.

Any reference to "attainment date" in subsection (b), which is incorporated by reference into this subsection, shall refer to the attainment date for serious areas.

(d) Severe areas. Each State in which all or part of a Severe Area is located shall, with respect to the Severe Area, make the submissions described under subsection (c) (relating to Serious Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Severe Area, the terms "major source" and "major stationary source" include (in addition to the sources described in section 302 [*42 USCS § 7602*]) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of volatile organic compounds.

(1) Vehicle miles traveled.

(A) Within 2 years after the date of enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], the State shall submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart [42 USCS §§ 7511 et seq.], to comply with the requirements of subsection [subsections] (b)(2)(B) and (c)(2)(B) (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 108(f) [42 USCS § 7408(f)], and choose from among and implement such measures as necessary to demonstrate attainment with the national ambient air quality standards; in considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them.

(B) The State may also, in its discretion, submit a revision at any time requiring employers in such area to implement programs to reduce work-related vehicle trips and miles travelled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 108(f) [42 USCS § 7408(f)] and may require that employers in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods. The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes. Any State required to submit a revision under this subparagraph (as in effect before the date of enactment of this sentence [enacted Dec. 23, 1995]) containing provisions requiring employers to reduce work-related vehicle trips and miles travelled by employees may, in accordance with State law, remove such provisions from the implementation plan, or withdraw its submission, if the State notifies the Administrator, in writing, that the State has undertaken, or will undertake, one or more alternative methods that will achieve emission reductions equivalent to those to be achieved by the removed or withdrawn provisions.

(2) Offset requirement. For purposes of satisfying the offset requirements pursuant to this part [42 USCS §§ 7501 et seq.], the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.3 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 169(3) [42 USCS § 7479(3)]) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(3) Enforcement under section 185. By December 31, 2000, the State shall submit a plan revision which includes the provisions required under section 185 [42 USCS § 7511d].

Any reference to the term "attainment date" in subsection (b) or (c), which is incorporated by reference into this subsection (d), shall refer to the attainment date for Severe Areas.

(e) Extreme areas. Each State in which all or part of an Extreme Area is located shall, with respect to the Extreme Area, make the submissions described under subsection (d) (relating to Severe Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. The provisions of clause (ii) of subsection (c)(2)(B) (relating to reductions of less than 3 percent), the provisions of paragaphs [paragraphs] (6), (7) and (8) of subsection (c) (relating to de minimus [minimis] rule and modification of sources), and the provisions of clause (ii) of subsection (b)(1)(A) (relating to reductions of less than 15 percent) shall not apply in the case of an Extreme Area. For any Extreme Area, the terms "major source" and "major stationary source" includes [include] (in addition to the sources described in section 302 [42 USCS § 7602]) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 10 tons per year of volatile organic compounds.

(1) Offset requirement. For purposes of satisfying the offset requirements pursuant to this part [42 USCS §§ 7501 et seq.], the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.5 to 1, except that if the State plan requires all existing major sources in the

nonattainment area to use best available control technology (as defined in section 169(3) [42 USCS § 7479(3)]) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(2) Modifications. Any change (as described in section 111(a)(4) [42 USCS § 7411(a)(4)]) at a major stationary source which results in any increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source shall be considered a modification for purposes of section 172(c)(5) and section 173(a) [42 USCS §§ 7502(c)(5), 7503(a)], except that for purposes of complying with the offset requirement pursuant to section 173(a)(1) [42 USCS § 7503(a)(1)], any such increase shall not be considered a modification if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of the air pollutant concerned from other discrete operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. The offset requirements of this part [42 USCS §§ 7501 et seq.] shall not be applicable in Extreme Areas to a modification of an existing source if such modification consists of installation of equipment required to comply with the applicable implementation plan, permit, or this Act.

(3) Use of clean fuels or advanced control technology. For Extreme Areas, a plan revision shall be submitted within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990] to require, effective 8 years after such date, that each new, modified, and existing electric utility and industrial and commercial boiler which emits more than 25 tons per year of oxides of nitrogen--

(A) burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low polluting fuel), or

(B) use advanced control technology (such as catalytic control technology or other comparably effective control methods) for reduction of emissions of oxides of nitrogen.

For purposes of this subsection, the term "primary fuel" means the fuel which is used 90 percent or more of the operating time. This paragraph shall not apply during any natural gas supply emergency (as defined in title III of the Natural Gas Policy Act of 1978 [15 USCS §§ 3361 et seq.]).

(4) Traffic control measures during heavy traffic hours. For Extreme Areas, each implementation plan revision under this subsection may contain provisions establishing traffic control measures applicable during heavy traffic hours to reduce the use of high polluting vehicles or heavy-duty vehicles, notwithstanding any other provision of law.

(5) New technologies. The Administrator may, in accordance with section 110 [42 USCS § 7410], approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies, and an attainment demonstration based on such provisions, if the State demonstrates to the satisfaction of the Administrator that--

(A) such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990]; and

(B) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented as set forth herein if the anticipated technologies do not achieve planned reductions.

Such contingency measures shall be submitted to the Administrator no later than 3 years before proposed implementation of the plan provisions and approved or disapproved by the Administrator in accordance with section 110 [42 USCS § 7410]. The contingency measures shall be adequate to produce emission reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emission reductions required by subsection (b)(1) or (c)(2) and attainment by the applicable dates. If the Administrator determines that an Extreme Area has failed to achieve an emission reduction requirement set forth in subsection (b)(1) or (c)(2), and that such failure is due in whole or part to an inability to fully implement provisions approved pursuant to this subsection, the Administrator shall require the State to implement the contingency measures to the extent necessary to assure compliance with subsections (b)(1) and (c)(2).

Any reference to the term "attainment date" in subsection (b), (c), or (d) which is incorporated by reference into this subsection, shall refer to the attainment date for Extreme Areas.

(f) NO[X] requirements.

(1) The plan provisions required under this subpart [42 USCS §§ 7511 et seq.] for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 302 [42 USCS § 7602] and subsections (c), (d), and (e) of this section) of oxides of nitrogen. This subsection shall not apply in the case of oxides of nitrogen for those sources for which the Administrator determines (when the Administrator approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from the sources concerned. This subsection shall also not apply in the case of oxides of nitrogen for--

(A) nonattainment areas not within an ozone transport region under section 184 [42 USCS § 7511c] if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(B) nonattainment areas within such an ozone transport region if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not produce net ozone air quality benefits in such region.

The Administrator shall, in the Administrator's determinations, consider the study required under section 185B [42 USCS § 7511f].

(2) (A) If the Administrator determines that excess reductions in emissions of NO[X] would be achieved under paragraph (1), the Administrator may limit the application of paragraph (1) to the extent necessary to avoid achieving such excess reductions.

(B) For purposes of this paragraph, excess reductions in emissions of NO[X] are emission reductions for which the Administrator determines that net air quality benefits are greater in the absence of such reductions. Alternatively, for purposes of this paragraph, excess reductions in emissions of NO[X] are, for--

(i) nonattainment areas not within an ozone transport region under section 184 [42 USCS § 7511c], emission reductions that the Administrator determines would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(ii) nonattainment areas within such ozone transport region, emission reductions that the Administrator determines would not produce net ozone air quality benefits in such region.

(3) At any time after the final report under section 185B [42 USCS § 7511f] is submitted to Congress, a person may petition the Administrator for a determination under paragraph (1) or (2) with respect to any nonattainment area or any ozone transport region under section 184 [42 USCS § 7511c]. The Administrator shall grant or deny such petition within 6 months after its filing with the Administrator.

(g) Milestones.

(1) Reductions in emissions. 6 years after the date of the enactment of the Clean Air Amendments of 1990 [enacted Nov. 15, 1990] and at intervals of every 3 years thereafter, the State shall determine whether each nonattainment area (other than an area classified as Marginal or Moderate) has achieved a reduction in emissions during the preceding intervals equivalent to the total emission reductions required to be achieved by the end of such interval pursuant to subsection (b)(1) and the corresponding requirements of subsections (c)(2) (B) and (C), (d), and (e). Such reduction shall be referred to in this section as an applicable milestone.

(2) Compliance demonstration. For each nonattainment area referred to in paragraph (1), not later than 90 days after the date on which an applicable milestone occurs (not including an attainment date on which a milestone occurs in cases where the standard has been attained), each State in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been

met. A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require, by rule. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) Serious and Severe Areas; State election. If a State fails to submit a demonstration under paragraph (2) for any Serious or Severe Area within the required period or if the Administrator determines that the area has not met any applicable milestone, the State shall elect, within 90 days after such failure or determination--

(A) to have the area reclassified to the next higher classification,

(B) to implement specific additional measures adequate, as determined by the Administrator, to meet the next milestone as provided in the applicable contingency plan, or

(C) to adopt an economic incentive program as described in paragraph (4).

If the State makes an election under subparagraph (B), the Administrator shall, within 90 days after the election, review such plan and shall, if the Administrator finds the contingency plan inadequate, require further measures necessary to meet such milestone. Once the State makes an election, it shall be deemed accepted by the Administrator as meeting the election requirement. If the State fails to make an election required under this paragraph within the required 90-day period or within 6 months thereafter, the area shall be reclassified to the next higher classification by operation of law at the expiration of such 6-month period. Within 12 months after the date required for the State to make an election, the State shall submit a revision of the applicable implementation plan for the area that meets the requirements of this paragraph. The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(4) Economic incentive program.

(A) An economic incentive program under this paragraph shall be consistent with rules published by the Administrator and sufficient, in combination with other elements of the State plan, to achieve the next milestone. The State program may include a nondiscriminatory system, consistent with applicable law regarding interstate commerce, of State established emissions fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to ozone formation, or any combination of the foregoing or other similar measures. The program may also include incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 108(f) [*42 USCS § 7408(f)*].

(B) Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], the Administrator shall publish rules for the programs to be adopted pursuant to subparagraph (A). Such rules shall include model plan provisions which may be adopted for reducing emissions from permitted stationary sources, area sources, and mobile sources. The guidelines shall require that any revenues generated by the plan provisions adopted pursuant to subparagraph (A) shall be used by the State for any of the following:

(i) Providing incentives for achieving emission reductions.

(ii) Providing assistance for the development of innovative technologies for the control of ozone air pollution and for the development of lower-polluting solvents and surface coatings. Such assistance shall not provide for the payment of more than 75 percent of either the costs of any project to develop such a technology or the costs of development of a lower-polluting solvent or surface coating.

(iii) Funding the administrative costs of State programs under this Act. Not more than 50 percent of such revenues may be used for purposes of this clause.

(5) Extreme areas. If a State fails to submit a demonstration under paragraph (2) for any Extreme Area within the required period, or if the Administrator determines that the area has not met any applicable milestone, the State shall, within 9 months after such failure or determination, submit a plan revision to implement an economic incentive program which meets the requirements of paragraph (4). The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(h) Rural transport areas.

(1) Notwithstanding any other provision of section 181 [42 USCS § 7511] or this section, a State containing an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census), which area is treated by the Administrator, in the Administrator's discretion, as a rural transport area within the meaning of paragraph (2), shall be treated by operation of law as satisfying the requirements of this section if it makes the submissions required under subsection (a) of this section (relating to marginal areas).

(2) The Administrator may treat an ozone nonattainment area as a rural transport area if the Administrator finds that sources of VOC (and, where the Administrator determines relevant, NO[X]) emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.

(i) Reclassified areas. Each State containing an ozone nonattainment area reclassified under section 181(b)(2) [42 USCS § 7511(b)(2)] shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.

(j) Multi-State ozone nonattainment areas.

(1) Coordination among States. Each State in which there is located a portion of a single ozone nonattainment area which covers more than one State (hereinafter in this section referred to as a "multi-State ozone nonattainment area") shall--

(A) take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned; and

(B) use photochemical grid modeling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective.

The Administrator may not approve any revision of a State implementation plan submitted under this part [42 USCS §§ 7501 et seq.] for a State in which part of a multi-State ozone nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

(2) Failure to demonstrate attainment. If any State in which there is located a portion of a multi-State ozone nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for ozone in that portion within the required period, the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all measures required under section 182 [42 USCS § 7511a] (relating to plan submissions and requirements for ozone nonattainment areas). If the Administrator makes such finding, the provisions of section 179 [42 USCS § 7509] (relating to sanctions) shall not apply, by reason of the failure to make such demonstration, in the portion of the multi-State ozone nonattainment area within the State submitting such petition.

42 USCS § 7511c

Current through PL 115-171, approved 5/9/18

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 85. AIR POLLUTION PREVENTION AND CONTROL > PROGRAMS AND ACTIVITIES > PLAN REQUIREMENTS FOR NONATTAINMENT AREAS > ADDITIONAL PROVISIONS FOR OZONE NONATTAINMENT AREAS

§ 7511c. Control of interstate ozone air pollution

(a) Ozone transport regions. A single transport region for ozone (within the meaning of section 176A(a) [42 USCS § 7506a(a)]), comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia, is hereby established by operation of law. The provisions of section 176A(a)(1) and (2) [42 USCS § 7506a(a)(1), (2)] shall apply with respect to the transport region established under this section and any other transport region established for ozone, except to the extent inconsistent with the provisions of this section. The Administrator shall convene the commission required (under section 176A(b) [42 USCS § 7506a(b)]) as a result of the establishment of such region within 6 months of the date of the enactment of the Clean Air Act Amendments of 1990.

(b) Plan provisions for States in ozone transport regions.

(1) In accordance with section 110 [42 USCS § 7410], not later than 2 years after the date of the enactment of the Clean Air Act Amendments of 1990 (or 9 months after the subsequent inclusion of a State in a transport region established for ozone), each State included within a transport region established for ozone shall submit a State implementation plan or revision thereof to the Administrator which requires the following--

(A) that each area in such State that is in an ozone transport region, and that is a metropolitan statistical area or part thereof with a population of 100,000 or more comply with the provisions of section 182(c)(2)(A) [42 USCS § 7511a(c)(2)(A)] (pertaining to enhanced vehicle inspection and maintenance programs); and

(B) implementation of reasonably available control technology with respect to all sources of volatile organic compounds in the State covered by a control techniques guideline issued before or after the date of the enactment of the Clean Air Act Amendments of 1990.

(2) Within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through vehicle refueling controls contained in section 182(b)(3) [42 USCS § 7511a(b)(3)], and such measures or such vehicle refueling controls shall be implemented in accordance with the provisions of this section. Notwithstanding other deadlines in this section, the applicable implementation plan shall be revised to reflect such measures within 1 year of completion of the study. For purposes of this section any stationary source that emits or has the potential to emit at least 50 tons per year of volatile organic compounds shall be considered a major stationary source and subject to the requirements which would be applicable to major stationary sources if the area were classified as a Moderate nonattainment area.

(c) Additional control measures.

(1) Recommendations. Upon petition of any State within a transport region established for ozone, and based on a majority vote of the Governors on the Commission [commission] (or their designees), the Commission [commission] may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart [*42 USCS §§ 7511* et seq.]. The commission shall transmit such recommendations to the Administrator.

(2) Notice and review. Whenever the Administrator receives recommendations prepared by a commission pursuant to paragraph (1) (the date of receipt of which shall hereinafter in this section be referred to as the "receipt date"), the Administrator shall--

(A) immediately publish in the Federal Register a notice stating that the recommendations are available and provide an opportunity for public hearing within 90 days beginning on the receipt date; and

(B) commence a review of the recommendations to determine whether the control measures in the recommendations are necessary to bring any area in such region into attainment by the dates provided by this subpart [*42 USCS §§ 7511* et seq.] and are otherwise consistent with this Act.

(3) Consultation. In undertaking the review required under paragraph (2)(B), the Administrator shall consult with members of the commission of the affected States and shall take into account the data, views, and comments received pursuant to paragraph (2)(A).

(4) Approval and disapproval. Within 9 months after the receipt date, the Administrator shall (A) determine whether to approve, disapprove, or partially disapprove and partially approve the recommendations; (B) notify the commission in writing of such approval, disapproval, or partial disapproval; and (C) publish such determination in the Federal Register. If the Administrator disapproves or partially disapproves the recommendations, the Administrator shall specify--

(i) why any disapproved additional control measures are not necessary to bring any area in such region into attainment by the dates provided by this subpart [*42 USCS §§ 7511* et seq.] or are otherwise not consistent with the [this] Act; and

(ii) recommendations concerning equal or more effective actions that could be taken by the commission to conform the disapproved portion of the recommendations to the requirements of this section.

(5) Finding. Upon approval or partial approval of recommendations submitted by a commission, the Administrator shall issue to each State which is included in the transport region and to which a requirement of the approved plan applies, a finding under section 110(k)(5) [*42 USCS § 7410(k)(5)*] that the implementation plan for such State is inadequate to meet the requirements of section 110(a)(2)(D) [*42 USCS § 7410(a)(2)(D)*]. Such finding shall require each such State to revise its implementation plan to include the approved additional control measures within one year after the finding is issued.

(d) Best available air quality monitoring and modeling. For purposes of this section, not later than 6 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate criteria for purposes of determining the contribution of sources in one area to concentrations of ozone in another area which is a nonattainment area for ozone. Such criteria shall require that the best available air quality monitoring and modeling techniques be used for purposes of making such determinations.

History

(July 14, 1955, ch 360, Title I, Part D, Subpart 2, § 184, as added Nov. 15, 1990,*P.L. 101-549*, Title I, § 103, *104 Stat. 2448*.)

<u>*42 USCS § 7606*</u>

Current through PL 115-170, approved 5/9/18

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 85. AIR POLLUTION PREVENTION AND CONTROL > GENERAL PROVISIONS

§ 7606. Federal procurement

(a) Contracts with violators prohibited. No Federal agency may enter into any contract with any person who is convicted of any offense under section 113(c) [*42 USCS § 7413(c)*] for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 113(c)(2) [*42 USCS § 7413(c)(2)*], the condition giving rise to the conviction also shall be considered to include any substantive violation of this Act associated with the violation of 113(c)(2) [*42 USCS § 7413(c)(2)*]. The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.

(b) Notification procedures. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).

(c) Federal agency contracts. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Amendments of 1970 [enacted Dec. 31, 1970] cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) Exemptions; notification to Congress. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(e) Annual report to Congress. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section.

History

(July 14, 1955, ch 360, Title III, § 306, as added Dec. 31, 1970, *P.L. 91-604*, § 12, *84 Stat. 1707*; Nov. 15, 1990, *P.L. 101-549*, Title VII, § 705, *104 Stat. 2680*.)

Annotations

Notes

42 USCS § 7607

Current through PL 115-170, approved 5/9/18

United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 85. AIR POLLUTION PREVENTION AND CONTROL > GENERAL PROVISIONS

§ 7607. Administrative proceedings and judicial review

(a) Administrative subpenas; confidentiality; witnesses. In connection with any determination under section 110(f) [*42 USCS § 7410(f)*], or for purposes of obtaining information under section 202(b)(4) or 211(c)(3) [*42 USCS § 7521(b)(4)* or *7545(c)(3)*], any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the [this] Act (including but not limited to section 113, section 114, section 120, section 129, section 167, section 205, section 206, section 208, section 303, or section 306 [*42 USCS § 7413*, *7414*, *7420*, *7429*, *7477*, *7524*, *7525*, *7542*, *7603*, or *7606*][,], the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of *section 1905 of title 18 of the United States Code*, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 202(c) [*42 USCS § 7521(c)*], or when relevant in any proceeding under this Act. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Judicial review.

(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard or requirement under section 112 [*42 USCS § 7412*], any standard of performance or requirement under section 111 [*42 USCS § 7411*][,], any standard under section 202 [*42 USCS § 7521*] (other than a standard required to be prescribed under section 202(b)(1) [*42 USCS § 7521(b)(1)*]), any determination under section 202(b)(5) [*42 USCS § 7521(b)(5)*], any control or prohibition under section 211 [*42 USCS § 7545*], any standard under section 231 [*42 USCS § 7571*] any rule issued under section 113, 119, or under section 120 [*42 USCS § 7413*, *7419*, or *7420*], or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this Act may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 110 or section 111(d) [*42 USCS § 7410* or *7411(d)*], any order under section 111(j) [*42 USCS § 7411(j)*], under section 112 [*42 USCS § 7412*],[,] under section 119

[42 USCS § 7419], or under section 120 [42 USCS § 7420], or his action under section 119(c)(2)(A), (B), or (C) (as in effect before the date of enactment of the Clean Air Act Amendments of 1977) or under regulations thereunder, or revising regulations for enhanced monitoring and compliance certification programs under section 114(a)(3) of this Act, or any other final action of the Administrator under this Act (including any denial or disapproval by the Administrator under title I [42 USCS §§ 7401 et seq.]) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement. Where a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to paragraph (1).

(c) Additional evidence. In any judicial proceeding in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as [to] the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(d) Rulemaking.

(1) This subsection applies to--

(A) the promulgation or revision of any national ambient air quality standard under section 109 [42 USCS § 7409],

(B) the promulgation or revision of an implementation plan by the Administrator under section 110(c) [42 USCS § 7410(c)],

(C) the promulgation or revision of any standard of performance under section 111 [42 USCS § 7411], or emission standard or limitation under section 112(d) [42 USCS § 7412(d)], any standard under section 112(f) [42 USCS § 7412(f)], or any regulation under section 112(g)(1)(D) and (F) [42 USCS § 7412(g)(1)(D),(F)], or any regulation under section 112(m) or (n) [42 USCS § 7412(m) or (n)],

(D) the promulgation of any requirement for solid waste combustion under section 129 [42 USCS § 7429],

(E) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 211 [42 USCS § 7545],

(F) the promulgation or revision of any aircraft emission standard under section 231 [42 USCS § 7571],

(G) the promulgation or revision of any regulation under title IV (relating to control of acid deposition),

(H) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 119 [*42 USCS § 7419*] (but not including the granting or denying of any such order),

(I) promulgation or revision of regulations under title VI [*42 USCS §§ 7671* et seq.] (relating to stratosphere and ozone protection),

(J) promulgation or revision of regulations under subtitle C of title I [*42 USCS §§ 7470* et seq.] (relating to prevention of significant deterioration of air quality and protection of visibility),

(K) promulgation or revision of regulations under section 202 [*42 USCS § 7521*] and test procedures for new motor vehicles or engines under section 206 [*42 USCS § 7525*], and the revision of a standard under section 202(a)(3) [*42 USCS § 7521(a)(3)*],

(L) promulgation or revision of regulations for noncompliance penalties under section 120 [*42 USCS § 7420*],

(M) promulgation or revision of any regulations promulgated under section 207 [*42 USCS § 7541*] (relating to warranties and compliance by vehicles in actual use),

(N) action of the Administrator under section 126 [*42 USCS § 7426*] (relating to interstate pollution abatement),

(O) the promulgation or revision of any regulation pertaining to consumer and commercial products under section 183(e) [*42 USCS § 7511b(e)*],

(P) the promulgation or revision of any regulation pertaining to field citations under section 113(d)(3) [*42 USCS § 7413(d)(3)*],

(Q) the promulgation or revision of any regulation pertaining to urban buses or the clean-fuel vehicle, clean-fuel fleet, and clean fuel programs under part C of title II [*42 USCS §§ 7581* et seq.],

(R) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under section 213 [*42 USCS § 7547*],

(S) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under section 217 [*42 USCS § 7552*],

(T) the promulgation or revision of any regulation under title IV [*42 USCS §§ 7641* et seq.] (relating to acid deposition),

(U) the promulgation or revision of any regulation under section 183(f) [*42 USCS § 7511b(f)*] pertaining to marine vessels, and

(V) such other actions as the Administrator may determine.

The provisions of section 553 through 557 and *section 706 of title 5 of the United States Code* shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of sub*section 553(b) of title 5 of the United States Code*.

(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a "rule"). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under *section 553(b) of title 5, United States Code*, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the "comment period"). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of--

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 109(d) [42 USCS § 7409(d)] and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(4) (A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(B)

(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(5) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(6) (A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(7) (A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6).

(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b)). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b)) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

(D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after ninety days after the date of enactment of the Clean Air Act Amendments of 1977 [enacted Aug. 7, 1977].

(e) Other methods of judicial review not authorized. Nothing in this Act shall be construed to authorize judicial review of regulations or orders of the Administrator under this Act, except as provided in this section.

(f) Costs. In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.

(g) Stay, injunction, or similar relief in proceedings relating to noncompliance penalties. In any action respecting the promulgation of regulations under section 120 [*42 USCS § 7420*] or the administration or enforcement of section 120 [*42 USCS § 7420*] no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.

(h) Public Participation. It is the intent of Congress that, consistent with the policy of the Administrative Procedures Act [*5 USCS §§ 551* et seq.], the Administrator in promulgating any regulation under this Act, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at

least 30 days, except as otherwise expressly provided in section [sections] 107(d), 172(a), 181(a) and (b), and 186(a) and (b) [42 USCS §§ 7407(d), 7502(a), 7511(a) and (b), 7512(a) and (b)].

History

(July 14, 1955, ch 360, Title III, § 307, as added Dec. 31, 1970, P.L. 91-604, § 12(a), 84 Stat. 1707; Nov. 18, 1971, P.L. 92-157, Title III, § 302(a), 85 Stat. 464; June 22, 1974, P.L. 93-319, § 6(c), 88 Stat. 259; Aug. 7, 1977, P.L. 95-95, Title III, §§ 303(d), 305(a), (c), (f)-(h), 91 Stat. 772, 776, 777; Nov. 16, 1977, P.L. 95-190, § 14(a)(79), (80), 91 Stat. 1404; Nov. 15, 1990, *P.L. 101-549*, Title I, §§ 108(p), 110(5), Title III, § 302(g), (h), Title VII, §§ 702(c), 703, 706, 707(h), 710(b), *104 Stat. 2469*, 2470, 2574, 2681, 2682-2684.)

Annotations

Notes

References in text:

"Section 202(b)(4)" and "section 202(b)(5), referred to in subsecs. (a)(1) and (b)(1) respectively, which appeared as 42 USCS § 7521(b)(4), was repealed by Act Nov. 15, 1990, *P.L. 101-549*, Title II, § 203(2), *104 Stat. 2529*.

"This Act", referred to in this section, is Act July 14, 1955, ch 360, 69 Stat. 322, as generally amended by Act Dec. 17, 1963, P.L. 88-206, 77 Stat. 392, which formerly appeared as 42 USCS §§ 1857 et seq. prior to its general amendment by Act Aug. 7, 1977, P.L. 95-95, 91 Stat. 685, and now appears as 42 USCS §§ 7401 et seq.

"Sections 119(c)(2)(A), (B), or (C) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)", referred to in this section, is § 119(c)(2)(A), (B), or (C) of Act July 14, 1955, ch 360, Title I, as added June 22, 1974, P.L. 93-319, § 3, 88 Stat. 248, which formerly appeared as 42 USCS § 1857c-10(2)(A), (B), or (C) prior to enactment of Act Aug. 7, 1977, P.L. 95-95, 91 Stat. 691. Act Aug. 7, 1977, § 112(b)(1), repealed such § 119 of Act July 14, 1955 and provided that all references to such § 119 in any subsequent enactment which supersedes Act June 22, 1974 should be construed to refer to § 113(d) of Act July 14, 1955 and to para. (5) in particular, which appears as subsec. (d)(5) of 42 USCS § 7413. Act Aug. 7, 1977, § 117(b), also added a § 119 of Act July 14, 1955, which appears as 42 USCS § 7419.

"Title IV", referred to in subsec. (d)(1)(G) of this section, is probably a reference to Title IV of Act July 14, 1955, ch 360, as added by Act Nov. 15, 1990, *P.L. 101-549*, Title IV, § 401, *104 Stat. 2584*, which appears as 42 USCS §§ 7651 et seq. (Another Title IV of Act July 14, 1955, appears as 42 USCS §§ 7641, 7642.)

"Title IV", referred to in subsec. (d)(1)(T) of this section, is probably a reference to Title IV of Act July 14, 1955, ch 360, as added by Act Dec. 31, 1970, P.L. 91-604, § 14, 84 Stat. 1709, which appears as 42 USCS §§ 7641 et seq. (Another Title IV of Act July 14, 1955, appears as 42 USCS §§ 7651 et seq.)

Explanatory notes:

In subsec. (h), "*5 USCS §§ 551* et seq." has been inserted in brackets pursuant to § 7(b) of Act Sept. 6, 1966, P.L. 89-554, which appears as a note preceding *5 USCS § 101*. Section 1 of such Act enacted Title 5 as positive law, and § 7(b) of such Act provided that a reference to a law replaced by § 1 of such Act is deemed to refer to the corresponding provision enacted by such Act.

The bracketed word "this" was inserted in subsec. (a) to indicate the word probably intended by Congress.

The commas in subsecs. (a) and (b)(1) were enclosed in brackets to indicate the probable intent of Congress to omit such punctuation.

Legislative History

S. REP. 101-228, S. Rep. No. 228, 101ST Cong., 1ST Sess.
1989, 1990 U.S.C.C.A.N. 3385, 1989 WL 236970 (Leg.Hist.)
***3385** P.L. 101-549, CLEAN AIR ACT AMENDMENTS OF 1989

SENATE REPORT NO. 101–228

December 20, 1989
[To accompany S. 1630]

***3387** The Committee on Environment and Public Works, to which was referred the bill (S. 1630) to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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GENERAL STATEMENT

The Clean Air Act is the first modern environmental law to be enacted. It was first signed into law by President Johnson in 1963, replacing previous Federal air pollution legislation. In 1965 hearings before the Special Subcommittee on Air and Water Pollution, the Assistant Secretary of the Department of Health, Education, and Welfare testified:

> [S]erious air pollution problems aris[e] from the ever-increasing use of motor vehicles, [and] our rising demands for the energy derived from burning of sulfur-bearing fuels . . . The national importance of resolving these problems is beyond dispute. They are among the most significant factors in the growing and worsening air pollution problems currently faced by thousands of American communities...
>
> None of these problems is technologically insurmountable. Our current technical capacity for dealing with them admittedly varies from one problem to another, but even where our knowledge and skills are less refined than we

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would wish, there exist at least partial solutions which we would have a responsibility to evaluate as rapidly as possible ***3388** and to apply where feasible. (Hearing of April 6, 1965, page 22.)

This statement is still true today. Although some areas of the country have improved their air quality since 1965, a majority of Americans are still breathing air that does not meet the Federal health-based air quality standards.

Our knowledge about the adverse effects of exposure to air pollution has increased since 1965. Researchers have demonstrated adverse effects at levels of exposure previously presumed to be safe. Illnesses of no traumatic origin are now linked to air pollution. In some areas, for example, residents who do not smoke may have lungs as damaged as the lungs of heavy smokers, due to exposure to air pollution.

Air pollution can silently damage our lungs and heart or act swiftly in the case of exposure to toxic air pollutants. Rigorous regulation of toxic air pollutants is needed to avoid risk of serious, irreversible damage to human health.

We are routinely exposed to thousands of different air pollutants emitted every day. Exposure to this mix of pollutants can produce more adverse health effects than exposure to each of the individual pollutants. These synergistic effects must be considered if we are to adequately protect public health. In addition, there are many pathways of exposure to hazardous pollutants and contaminants. Exposure to polluted outdoor and indoor air, contaminated water and soil can combine to produce greater risks than exposure through only one source.

In testimony before the Subcommittee on Environmental Protection, public health leaders acknowledged the continuing health threat posed by air pollution. The American Lung Association, the American Public Health Association and the American Academy of Pediatrics all testified that we are facing a public health crisis due to air pollution. Reductions in emissions of sulfur dioxide and oxides of nitrogen are warranted based on health considerations alone. This conclusion does not address the myriad of other pollutants of concern. With regard to a graph of ozone pollution in the Northeast States for 1987 and 1988, one researcher from the American Lung Association stated:

...Most States went up significantly between 1987 and 1988 and Massachusetts tripled its ozone violation days up to 28 for that particular summer of 1988. Maine and New Hampshire tripled their violation dates in one year. Vermont appears on the graph for the first time in 1988. I consider this graph frightening, hair-raising, and truly a crisis.

A Harvard researcher testified before the Subcommittee that 'In every epidemiologic investigation that we have performed over the past 6 years, we have repeatedly found a 2 to 5 percent air pollution effect on human mortality and morbidity. We find it very difficult to reject these consistent findings..." (June 17, 1987).

In a separate study, the past President of the American Public Health Association found that "...air pollution is one of the ***3389** greatest risks to public health in the United States. Its causes, contributes to, or aggravates a long list of disease and dysfunction–chronic bronchitis, lung cancer, nervous disorders and heart disease. As many as 50,000 premature deaths may be caused by single air pollutants or a combination of pollutants." He further clarified his points by saying that 'If further Congressional action, or voluntary action by polluters, is not taken to reduce human exposure to a broad range of toxic air pollutants, then we can expect substantial increases in the incidence of air-pollution provoked disease, dysfunction, and premature deaths. A two- to three-fold (at least) incease, or 100,000 to 150,000 premature deaths per year would not be an unrealistic estimate. It is in fact a most conservative estimate."

The health problem is serious and it is pervasive. There is no choice but to breathe the air, whether it is clean or polluted. Air is inhaled regardless of its quality. This is a national resource that should be protected as our parks and national monuments are protected.

To protect this resource a strong national control strategy is needed. Air pollution recognizes no State or international borders. Aggressive controls in downwind areas will do little to improve air quality if the quality of air entering the region is poor. Because States have limited resources and many additional responsibilities, both the State and Federal Government should work together to assure implementation of programs that improve air quality.

Recent History.–Since the enactment of the original Clean Air Act and the Clean Air Act Amendments of 1977, issues relating to air quality continue to require Congressional action and concern.

Attainment of the health-based air quality standards has proven more difficult than anticipated in the 1977 Amendments. Although most areas of the country were to have attained the standards for ozone and carbon monoxide by 1983, in 1989, over half of the population of the United States is still exposed to levels of air pollution considered unhealthful by the Envronmental Protection Agency and medical researchers. New and disturbing evidence on the health effects of ozone and carbon monoxide indicates that the current standards may not be adequate to protect the public health.

Very little has been done since the passage of the 1970 Act to identify and control hazardous air pollutants. In the nineteen year history of the Clean Air Act, just eight substances have been listed as hazardous air pollutants: asbestos, beryllium, mercury, vinyl chloride, radionuclides, inorganic arsenic, benzene, and coke oven emissions. NESHAPS (National Emission Standards for Hazardous Air Pollutants) have been promulgated for sources of only seven of these pollutants. Meanwhile the States collectively have regulated over 700 hazardous air pollutants.

There is no credible dispute that acid rain is a major contributor to the burden of ill health and environmental damage in the United States. Reputable authorities, publishing their results in peer-review scientific journals, have concluded that acid rain and its precursors are responsible for between 50,000 and 70,000 premature deaths per year. In addition acid deposition is responsible for ***3390** massive damage to buildings and other man-made structures, poisoning lakes and stream to the extent that they no longer can support fish and other life, altering the chemical composition of soils and upsetting the natural balance which enables their productive use, and reducing visibility throughout the United States.

During the last decade, the Committee on Environment and Public Works has reported legislation addressing all of these issues. During the 1980's, the Committee continued its efforts to devise legislation that would reduce acid precipitation levels, bring about attainment of the air quality standards, and control toxic air pollutants. Bills were introduced and reported by the Committee to the Senate three times, but none has been enacted.

In 1982, the Committee reported acid rain legislation by a vote of 15–1. The reported bill required an 8 million ton reduction in sulfur dioxide by 1995. These reductions were required in a 31-State region east of the Mississippi River.

In 1984, the Committee again reported acid rain legislation which required a 10 million ton reduction in sulfur dixoide emissions by 1994. As in 1982, the reduction requirement affected only the 31 States east of the Mississippi.

The last bill to be reported by the Committee was S. 1894 in November, 1987. The five title proposal contained provisions on ozone and carbon monoxide nonattainment, acid rain and clean coal technology, mobile sorces, ambient air quality standards, hazardous air pollutants and incinerator standards. The bill's acid title required a national 12 million ton reduction in sulfur dioxide emissions by 1998. Despite efforts to develop an acceptable compromise, the Senate did not act on comprehensive clean air legislation before the 100th Congress adjourned in October of that year.

As with acid, rain, the Committee reported comprehensive legislation on nonattainment and air toxics in 1982, 1984 and 1987. In November of 1982, after 27 hearings and 33 markups, the Committee reported S. 3041, the Clean Air Amendments of 1982.

In May of 1984 the Committee reported S. 768, the Clean Air Act Amendments of 1984. A total of nine days of hearings was held on S. 768.

In November of 1987, the Committee reported S. 1894, the Clean Air Standards Attainment Act of 1987, after 13 days of hearings and 9 days of mark-up.

S. 1630, the Clean Air Amendments of 1989, reflects the advances in our knowledge of the health effects, sources, and controls of air pollution. It builds on over a decade of careful study and consideration of the air pollution problems facing the country. It incorporates new areas of concern, such as chlorofluorocarbons, whose impact was virtually unknown a decade ago and which we now know depletes the Earth's protective ozone layer. Its goal is to protect, as a national resources, the very air that all of us rely on for our daily existence.

***3391** DISCUSSION OF PROVISIONS

TITLE I–ATTAINMENT AND MAINTENANCE OF AMBIENT AIR QUALITY STANDARDS

INTRODUCTION

Background.–The goal of the Clean Air Act is to "protect and enhance the quality of the Nation's air resources." The Act distinguishes between two types of air pollutants (causing death or serious illness at low levels) which are addressed in title III of the bill and "criteria" pollutants (so-called because under section 108 of the Act EPA must issue criteria documents identifying the effects of each pollutant).

Criteria pollutants are defined as those pollutants that come from numerous or diverse sources and whose presence "may reasonably be anticipated to endanger public health or welfare". Section 109 of the Act requires EPA to establish for each criteria pollutant a national ambient air quality standard that is a uniform, nationwide standard.

As defined in the Act, "primary" ambient air quality standards limit the maximum allowable concentration of each criteria pollutant to the level that "protects the public health" with an "adequate margin of safety", without regard to the economic or technical feasibility of attainment. This means identifying through research the lowest level at which health effects are observed and applying a margin of safety to arrive at the ambient standard. Secondary standards are established to protest against adverse impacts on welfare, including impacts on visibility, vegetation, animals, wildlife, materials and property. The States, together with EPA, are responsible for ensuring that the primary air quality standards are met "as expeditiously as practicable", within the deadlines specified in the Act. The secondary standards are to be attained in a "reasonable" period of time.

The six criteria pollutants for which EPA has established ambient standards are ozone, lead, sulfur dioxide, particulates, nitrogen dioxide, and carbon monoxide. Each ambient standard is based on a detailed review of scientific information contained in the criteria document that is prepared by EPA and expect advisers.

The lack of a program for regular reevaluation and revision of the original ambient standards led Congress, in the Clean Air Act Amendments of 1977, to mandate that the standards be, and revised if appropriate, by December 31, 1980, and at five-year intervals thereafter.

Two standards were promulgated before the end of 1980. A new standard was promulgated for airborne lead in 1978, and a revised ozone standard was published in 1979. However, both of these actions were stimulated, at least in part, by court litigation. The hydrocarbon (HC) standard was dropped in 1983. In 1985 the 1972 ***3392** standards for nitrogen dioxide and carbon monoxide were reaffirmed. A revised particulate matter standard was promulgated in 1987. Final actions on revisions of the 1971 standard for sulfur dioxide are still pending, as are revisions of the 1978 standard for

lead, and the 1979 standard for ozone. The Congressional mandate to reissue or revise ambient standards by December 31, 1980, and at five-year intervals thereafter is clearly not being met.

EPA has the authority to set ambient standards for additional pollutants and is considering establishing a new standard for acid aerosols. The Agency is currently in the process of preparing a criteria document on acid aerosols and estimates the process will take five years to complete.

Health effects of ozone.–The adverse health effects of exposure to ozone are well documented. Ozone is a strong oxidant formed by the interaction of hydrocarbons (also called volatile organic compounds, or VOCs), nitrogen oxides (NO), and sunlight. Ozone enters the body by way of the respiratory tract. Ninety percent of the ozone inhaled into the lung is never exhaled. Instead the ozone molecules react rapidly with the cells, fluids, and tissues that line the respiratory tract, irritating and inflaming the lungs.

Ozone is fatal at high concentrations. At lower concentrations found in many urban areas in the United States, extensive research has shown that healthy adults and children begin to exhibit adverse health effects. These include chest pains, shortness of breath, coughing, nausea, throat irritation, and increased susceptibility to respiratory infections.

Potentially more troubling and less well understood are the effects of long-term chronic exposure to summertime ozone concentrations found in many cities. Regular out-of-doors work or play during the hot, sunny summer months in the more polluted cities may cause biochemical and structural changes in the lung, paving the way for chronic respiratory diseases. A growing body of scientific evidence indicates that over the long term, chronic exposure to ozone may produce any accelerated aging of the lung analogous to that produced by cigarette smoke exposure. Ultimately, emphysema may result.

New evidence is also accumulating that the current ozone standard may not be sufficiently protective of public health. In one important test recently performed at EPA's research laboratory, 22 healthy individuals were exposed to 0.08 parts per million ozone for 6.6 hours, including five hours of moderate exercise. Respiratory function decreased with each succeeding hour of exposure. At the end of the exposure, it decreased by an average of seven percent, with one individual having a 26 percent reduction.

The Environmental Protection Agency has proposed and its Clean Air Scientific Advisory Committee has agreed, that the decreases in respiratory functions become adverse when the magnitude of the change exceeds ten percent. In EPA's study, seven of the 22 individuals crossed this threshold. EPA's results may indicate that the current air quality standard for ozone does not protect ***3393** public health with the adequate margin of safety required by the Act.

EPA is currently in the process of revising the criteria documents for ozone based on this and other existing data. The adequacy of the one-hour standard and the need for a longer-term standard (six-to eight-hour time average) has been called into question. EPA anticipates it will take approximately two more years to resolve this issue.

The people most likely to be injured from exposure to ozone include the elderly, people with preexisting respiratory problems, children (who have a faster respiration rate and are thus more exposed), and approximately 20 percent of the population, called "responders," that has a markedly strong and unpredictable adverse reaction to ozone. The American Lung Association estimated that over 28 million pre-adolescent children, 17 million elderly, 6 million asthmatics, and 7 million persons with chronic obstructive pulmonary disease live in ozone nonattainment areas.

Health effects of carbon monoxide.–Exposure to carbon monoxide produces adverse health effects because carbon monoxide is more readily absorbed into the blood than is oxygen. As carbon monoxide displaces oxygen, bodily functions which depend on oxygen are threatened. This means that brain and fetal functions are particularly at risk.

At high CO levels death by asphyxiation results. At lower levels carbon monoxide pollution is especially harmful to fetuses and persons with heart disease. The fetal brain has high oxygen requirements. Health studies conducted on animals suggest that even modest levels of carbon monoxide pollution pose risks to fetal brain development and possible irreversible neural damages. The American Lung Association estimates that over 1.4 million pregnant women live in areas which have failed to attain the carbon monoxide standards.

Persons with heart disease are also susceptible to carbon monoxide pollution. A heart already weakened by pulmonary disease is particularly sensitive to the displacement of oxygen from the bloodstream by carbon monoxide because the circulatory system has limited capacity to transport oxygen throughout the body.

Healthy people may also suffer adverse effects from modest carbon monoxide exposure. As oxygen levels in the bloodstream decline and carbon monoxide levels rise, persons may suffer reduced aerobic capacity. As oxygen levels in the brain are reduced, individuals may experience loss of visual perception, manual dexterity, and cognitive functions.

Those particularly at risk with respect to carbon monoxide exposure are the elderly, fetuses, children, and those with existing heart disease.

Health effects of particulate matter.–High levels of small particulate matter (particulate matter less than 10 microns in diameter, called PM–10) can produce a range of effects from temporary reductions of lung function and increased respiratory symptoms to aggravation of existing respiratory and cardiovascular disease, cancer, and even premature death.

Certain types of PM–10 pose special health risks. One especially dangerous component of PM–10 is the carbon-based particles that ***3394** result from incomplete combustion of fuel in diesel engines. EPA has concluded that these particulates, which are emitted in the exhaust of diesel trucks, buses, and other vehicles, may cause as many as 860 cancer cases annually. Particulates from wood stoves have similar hazardous characteristics.

Sulfates and nitrates, also called acid aerosols, are another dangerous type of particulates. These particulates are formed from emissions of sulfur dioxide and nitrogen oxides. Acid aerosols can sear sensitive lung tissues when inhaled. According to the Office of Technology Assessment, they could cause thousands of excess deaths each year. Even small dust particles can be hazardous, because they build up in the lungs over time and impair breathing capacity.

Children are especially vulnerable to PM–10 due to their higher respiratory rates and small lungs. A recent study in Utah found that hospital admissions for children with respiratory disease (pneumonia, pleurisy, and bronchitis) were three times higher than normal during months in which the Federal PM–10 standards were exceeded. Other vulnerable populations include the elderly, asthmatics, and victims of respiratory disease.

Health care costs.–The American Lung Association estimates that people in the United States spend $40 billion per year in additional health care costs due to exposure to air pollution. A study by the University of California released in July 1989 showed that in Southern California alone, decreased air pollution would save nearly $10 billion in annual health care costs. The study estimated that the health-care costs savings from Southern California's plan to meet the Federal air quality standards by the year 2003 would more than offset the plan's estimated $2.79 billion in pollution controls.

Welfare costs.–In addition, there are environmental and welfare effects of air pollution. Ozone pollution has been shown to cause extensive damage to many types of vegetation. EPA estimates that ozone pollution levels common in many areas can reduce tomato yields by 33 percent, beans by 26 percent, and soybeans by 20 percent. Other studies have shown that ozone levels below the Federal standard can cause wheat yields to drop by 30 percent.

According to the World Resources Institute, if ozone levels in agricultural regions were halved, the annual cost savings in crop loss would be on the order of $5.3 billion. U.S. wheat production would be boosted by $650 million (in 1987 dollars), soybean production by $3.4 billion, corn production by $880 million, and peanut production by $370 million. EPA has concluded that ozone causes annual crop losses of $2 to $3 billion per year.

Forests can also be damaged by this pollutant, but the damage to forests has not been quantified. Qualitatively, extensive damage and mortality from ozone have been demonstrated among pines in California and in the eastern United States. On high-elevation mountains in New England, most red spruce that showed significant needle loss in 1982 have since died. Fully 20 percent of the spruce alive in 1982 are now dead–a mortality rate eight times that at lower elevations. The stunted growth and 77 percent increase in mortality now showing up in commercial yellow pines in the Southeast may also reflect ozone air pollution at work.

***3395** Although quantification of these damages is more difficult than ascertaining the costs of pollution control equipment, billions of dollars each year would be saved from better protection of valued resources from ozone-induced damage, alone.

PM–10 pollution, especially PM–10 pollution less than 2.5 microns in diameter, impairs visibility. The National Park Service, for example, has reported that particulate pollution, especially fine sulfate particles, impairs scenic vistas within the national park system 90 percent of the time. PM–10 also soils materials and building surfaces. According to an EPA estimate, the damage is approximately $1 to $2 billion annually.

Clean Air Act history.–The 1970 and 1977 Clean Air Act Amendments established a partnership between the States and Federal government. EPA sets nationally uniform air quality standards and States, with the Agency's assistance, are responsible for meeting them. The requirement that the States develop State implementation plans (SIPs) and submit them to EPA for review allows for Federal oversight of the States' efforts to achieve and maintain the required level of air quality. In addition to the SIP process, the 1970 Clean Air Act established two mandatory control programs, one applying to new motor vehicles and the other to new stationary sources. EPA was responsible for setting standards for new motor vehicles. EPA also issues regulations for new stationary sources, called new source performance standards. The 1977 Amendments added three additional control programs, mandating ozone and carbon monoxide nonattainment areas to require retrofit controls on existing stationary sources, more stringent emissions limits on new stationary sources, and motor vehicle inspection and maintenance programs.

Primary and secondary standards for oxidants were first set by EPA in 1971. (Photochemical oxidants are a group of chemically related pollutants. From the standpoint of health and welfare effects, ozone is the most important of these pollutants.) In 1979 EPA revised the standard from total oxidants to the current definition of ozone only. Both the primary and secondary standards for ozone are currently defined as a daily maximum, one-hour average concentration of 0.12 parts per million (ppm), not to be exceeded more than once per year, on average. Areas exceeding this threshold are classified as nonattainment areas. EPA updates the nonattainment list annually, as data become available.

Identical primary and secondary standards for carbon monoxide (CO) were set in 1971 at levels of 9 ppm, 8-hour average, and 35 ppm, 1-hour average, neither to be exceeded more than once per year. These standards have been reviewed periodically by EPA and remain in place today.

In July 1987, EPA promulgated a modified ambient standard for particulate matter shifting the base for measurement from total suspended particulates (TSP) to particulates that are smaller than or equal to ten micrometers in size. This new standard is called PM–10 and replaces the old TSP standard. The modification was made as recent health effects documented that it is the smaller particulates, inhaled deeply into the lungs, that cause the primary threat to public health. Measurements of TSP could not reliably capture the extent of this threat, since larger particles have been ***3396** the overwhelming portion of measured TSP (not the smaller particles capable of penetrating so deeply into lung tissue).

The smaller particles that are 10 micrometers or smaller are more likely to cause most of the adverse health effects because of their ability to reach the thoracic or lower regions of the respiratory tract. (One micrometer is one-millionth of a meter, or 1/25,000 of an inch. For comparison, the thickness of a human air is 100–200 micrometers.)

The revised PM–10 measurement establishes a 24 hour primary (health based) and secondary standard limit of 150 micrograms of PM–10 per cubic meter of air. In addition, an annual standard was set at 50 micrograms per public meter. The Agency concluded that these standards will protect the public health with an adequate margin of safety.

At the time the new PM–10 standard was established, 97 counties (or parts of counties) in the nation were not meeting the primary TSP standards and had been designated as nonattainment. Construction bans on new or modified major sources of TSP had been in place in some of these areas since 1979. EPA lifted those bans with the promulgation of the new PM–10 standard.

While accurate monitoring data is limited (due primarily to limited Agency and State resources), PM–10 pollution is pervasive. EPA has developed an analysis that classifies all counties into three groups based on their probability of not attaining the revised PM–10 standard. The first group includes, those with a very high probability of not immediately attaining the new standard (roughly seventy counties). A second group contains 110 areas where existing air quality data are not sufficient to determine if they are attaining but there is some possibility that they will not reach attainment without additional control measures. The third groups contains the remaining 3,000 counties which the Agency estimates should be in attainment and will not require additional control efforts.

In the Clean Air Act of 1970, Congress set 1975 as the deadline for meeting the primary air quality standards. The States were required to develop State implementation plans that would estimate the emissions reductions required to attain the ambient standards and establish the control programs to achieve the required reductions. In addition, section 111 of the Act required EPA to promulgate new source performance standards (NSPS) for new or modified stationary sources. To enforce the NSPS, the States were required to include construction permit programs in their SIPs.

By 1977, two years after the original deadline, 78 areas were still violating the ozone standard then in place (no more than one exceedance per year of a one-hour average oxidant concentration of 0.08 ppm). In 1977, the deadline for meeting the ozone and CO standard was moved back to 1982. Areas could show they could not meet the 1982 deadline were able to obtain an extension until 1987.

Responding to the failure to meet the goals of the 1970 Clean Air Act, the 1977 Amendments included a new and more aggressive control program. New SIPs were to be developed and submitted to EPA in 1979, and again in 1982, for areas seeking extensions of the attainment deadlines to 1987. A new schedule was established for limiting emissions from new motor vehicles. Existing stationary ***3397** sources in nonattainment areas would have to retrofit with reasonably available emission controls. A new source could be constructed in a nonattainment area only if it would operate at the "lowest achievable emissions rate" and if emissions reductions could be obtained from other sources to offset the emissions from the proposed source. Transportation control measures would have to be considered. Severe nonattainment areas would have to implement automobile emissions inspection and maintenance programs.

In 1989, two years past the final deadline in the 1977 Amendments for all areas of the country to attain the CO and ozone health standards, 150 million people still live in areas which exceed one or both of those standards. The reasons for the failure to achieve healthy air are many. Among them are the understatement of emissions in inventories submitted by the States and approved by EPA; inadequacies in models used to predict ambient air quality; failure of States to implement some of the controls they had committed to in their SIPs; failure of some of the controls to achieve the projected emission reductions; and failure of EPA or the States to require additional controls when it became evident that the attainment deadlines would not be met.

The responsibility for the widespread failure to meet the ambient standards rests with both States (and local governments) and EPA. Predicting future air quality based on assumed control programs is a complicated undertaking that is susceptible to "paper" demonstrations of attainment that bear little relation to the likelihood of actual attainment. States had the responsibility to use the best data and analytical methods available in preparing emissions inventories and conducting modeling, and EPA had the responsibility for providing guidance of what constituted the best methods and carefully scrutinizing State submissions to assure that assumptions and analyses were consistent with the guidance.

In a January 1988 report the General Accounting Office (GAO) found in the three areas it studied–Houston, Los Angeles, and Charlotte, North Carolina–that assumptions used in models and inaccuracies in data exacerbated the uncertainties normally associated with models. This led to understating inventories of emissions and therefore the amount of emissions reductions needed to bring the areas into attainment. Both the States involved and EPA bear responsibility for these miscalculations.

In several areas controls that were included in a SIP were not implemented. For example, in New York and New Jersey Stage II programs that were called for in the SIPs were not implemented until courts (not EPA) ordered the States to fulfill the SIP commitments. An American Lung Association analysis conducted in 1986 found that in Los Angeles only three of 31 transportation and energy measures had been completed on schedule.

In some cases where control measures were implemented, they proved less effective than predicted, often because of lax enforcement. For example, the GAO study reported that EPA identified 13 plants in the Charlotte area in 1985 that were emitting more VOCs than regulations allowed. EPA also found that the county had granted variances to some operations without EPA approval.

Even when EPA identified problems in areas it often did little to require remedial action. For example, EPA discovered in 1985 that ***3398** Houston's demonstration of hydrocarbon emissions reductions needed for attainment was based on a faulty ratio of NOx to hydrocarbon emissions in the area. Rather than a 41 percent reduction, the new data showed that Houston needed a 71 percent reduction in hydrocarbons. EPA took no action to require Houston to revise its SIP, however, and instead waited to deal with the deficiencies in its generic nonattainment policy that was proposed in November of 1987.

Lack of resources at the Federal, State and local level has severely hampered implementation of the Act's requirements. During the decade of the 1980's, while the demands on EPA grew, appropriated funds for the air pollution program, as for other EPA programs, decreased both in nominal and real terms. States, which are required by the Act to impose permit fees to cover the costs of administering and enforcing permit programs, in many instances have not complied. Lack of resources led to preparation of inadequate and incomplete inventories, use of less costly–and less accurate–models, less frequent review and updating of inventories and other data on which control strategies are based, inadequate enforcement programs, and, at the Federal level, woefully inadequate oversight of, and technical assistance to, the States.

Lack of political will at all levels of government to implement difficult measures has also meant slower progress toward the attainment of healthy air. This is most clearly seen with respect to measures to reduce vehicle use in heavily polluted and heavily congested areas. The largest number of SIP provisions that were submitted and approved but that have not been implemented are provisions that call for transportation control measures. EPA's Office of Transportation and Land Use Policy was eliminated in 1982, and with its demise came the elimination of the requirement for States to report on the effectiveness of control measures and the ability of EPA to evaluate these measures. Federal transportation dollars have continued to finance programs and projects that have not been sufficiently reviewed for their potential adverse effects on air quality.

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The nonattainment policy proposed by EPA in 1987 attempted to address many of the problems illustrated above, primarily by requiring better data and analyses to be used in SIP revisions, inclusion of milestones or interim measures of progress during the period before attainment, and better tracking and reporting of progress. EPA has not published a final policy, but many of the proposals were incorporated in legislation submitted to Congress by the President.

Nonattainment provisions of the bill.–The nonattainment provisions of the bill are based on more than 17 years of experience in trying to attain healthy air in all areas of the nation. The deadlines in the bill for attainment are realistic, with the ozone deadlines being the longest in recognition of the complexity of the ozone pollution problem. The emphasis in the bill, however, is not on the deadlines but on what happens in the period before deadlines. The concept of reasonable further progress, which is in the current Act, is amplified by requiring specific incremental progress over defined periods for each of the pollutants addressed: ozone, carbon monoxide, and particulate matter (PM–10). Remedial steps are mandated ***3399** if an area fails to meet these periodic milestones. The bill also requires periodic updates of inventories and establishes regular reporting requirements for the States and explicit data that must be prepared by the States and reviewed by EPA.

The bill imposes emissions fees on stationary sources and registration fees for vehicles in order to provide State and local agencies the resources, from polluters, to conduct effective air pollution control programs, including complying with the more explicit requirements of the bill. Stationary source fees will also provide EPA with additional resources.

Motor vehicles are the single largest source of ozone and carbon monoxide pollution. Title II of the bill addresses emissions that result from the operation of vehicles, but that, alone, is not enough. Pollution can also be reduced if fewer vehicle trips take place in polluted and congested urban and suburban areas. Title I contains several provisions to encourage State and local governments, employers and drivers to plan ahead to reduce vehicle use while maintaining–and in some cases where congestion is a serious problem actually enhancing–mobility.

The bill reflects an increasing understanding of how ozone pollution is formed and transported. Because ozone is not a local phenomenon but is formed and transported over hundreds of miles and several days, localized control strategies will not be effective in reducing ozone levels. The bill, thus, expands the size of areas that are defined as ozone nonattainment areas to assure that controls are implemented in an area wide enough to address the problem. For the northeastern United States, the bill establishes an ozone transport region and requires that sources of ozone-forming pollutants throughout the region–whether the sources are in attainment or nonattainment areas–install certain controls.

The bill also requires control of oxides of nitrogen (NO) as a means of reducing ozone levels. While there remain uncertainties about the localized effect of no reductions on ozone levels, it is generally accepted that overall levels of ozone are more effectively reduced by reducing both no and volatile organic compound (VOC) emissions than by reducing VOCs, alone. Oxides of nitrogen also contribute to PM–10 levels and are a precursor of acid rain.

In summary, the nonattainment provisions of the bill are designed to bring about emissions reductions from all the major sources that contribute to ozone CO, and PM–10 pollution, to require regular and monitored progress toward attainment, and to assure that where progress is not what was predicted or needed to attain the standards, additional steps are taken to keep an area on the path to attainment by the required deadline.

DESIGNATION OF AREAS (SECTION 101)

SUMMARY

The bill amends section 107 of the Clean Air Act as follows:

of all potential alternatives to the single occupancy vehicle, ranging from highway facilities dedicated to moving high occupancy vehicles, to providing carpool, vanpool services and improved public transit.

The 1977 Amendments to the Act required areas that would not be able to meet the ozone or carbon monoxide standards by 1982 to implement transportation control measures (TCNs) as necessary to attain the standards, and some areas included these measures in their State implementation plans. However, OTA reports that the effect of these measures has not been evaluated at the Federal level because EPA's Office of Transportation and Land Use Policy was eliminated in 1982 and EPA has not required any reporting from the states.

In contrast, the South Coast Air Quality Management District and the Southern California Association of Governments completed in 1987–8 an assessment of the effectiveness of TCMs for the Los Angeles area. The study concluded that implementation of a wide range of TCMs would reduce highway vehicle VOC emissions by a total of 30 percent by 2010, compared to levels projected without TCMs. Total reductions in highway vehicle emissions of NO, carbon monoxide and particulate matter based on the TCM measures are also expected to be about 30 percent, compared to emissions levels projected for 2010 without the measures.

These studies indicate that in order to reduce or even avoid increases in vehicle pollution, it is not enought to control the pollution each car emits; the use of the car must be examined as well because growth in VMT threatens to overwhelm what can be achieved through tailpipe standards. These provisions, coupled with others in the bill, give EPA and the States the power to pursue a wide range of transportation demand management efforts.

GENERAL PLANNING REQUIREMENTS (SECTION 104)

SUMMARY

This section of the bill makes numerous revisions to section 110 of the Clean Air Act, many of which are technical, to eliminate outdated material. Substantive changes include the following:

States must submit State Department implementation plans (SIPS) within no more than 24 months after the promulgation of a national ambient air quality standard, rather than within nine months as in existing law.

Areas designated attainment or unclassifiable for a pollutant may be required by the Administrator to submit a SIP that shows how the area will maintain compliance with the ambient air quality standard for a 20-year period. States required to submit maintenance plans must update them every ten years. Any attainment or unclassified area that contains all or part of on MSA or CMSA must submit maintenance plans to the Administrator.

Provisions in existing law requiring SIPs to take into account the effect of emissions on other States are strengthened.

***3406** The bill requires the Administrator to issue minimum criteria that any SIP submission must meet and sets up timetables and procedures for EPA to determine whether or not to approve a SIP.

If a State fails to submit an appropriate SIP within two years after being sanctioned for failure to submit such a plan, as required by subpart D of the Act, the Administrator must promulgate a Federal implementation plan. The initial Federal plan must require reductions in emissions but does not have to provide for attainment. Within three years after proposal of the initial plan, the Federal plan must be revised to so provide.

The bill makes clear that provisions of an approved SIP stay in effect and are enforceable until a revision is approved by the Administrator.

DISCUSSION

Submission and review of plans.–Experience since passage of the Clean Air Amendments of 1970 has shown that nine months is not adequate time for States to prepare and submit implementation plans for new or revised ambient air quality standards. The bill extends the period to twenty-four months. This period applies to submission of maintenance plans, which are required for every MSA or CMSA that is contained in or contains an area designated attainment or unclassified with respect to a criteria pollutant, and to plans for every area designated nonattainment for any such pollutant, as well as to any other area the Administrator determines must submit a SIP.

Revisions to section 110(a)(2).–The bill replaces provisions currently in section 110(a)(2) of the Act with provisions that appear in paragraphs (1)–(12) of rewritten section 110(c) of the Act. The changes are as follows:

Paragraph (1) of rewritten section 110(c) combines and streamlines existing section 110(a)(2)(B) and the enforceability requirement of section 172(c) of current law.

Paragraph (2) rewrites existing section 110(a)(2)(C).

Paragraph (3) rewrites and streamlines current section 110(a)(2)(D), deleting the reference in that section to the preconstruction review program in section 110(a)(4) of existing law.

Paragraph (4) is described below in the interstate pollution discussion.

Paragraph (5) rewrites and expands current sections 110(a)(2)(F)(i) and (vi). The new provision requires that where a local authority, to which a State has granted authority to implement a SIP, fails to do so, the State will have the means and authority to implement the plan. EPA can hold the State responsible for any implementation failure caused by local action or inaction, or choose to exercise its existing authority to implement the SIP itself or act directly against the local authority. In addition, the State is required to manage and keep up-to-date information on implementation by local authorities so that EPA only has to rely on the State agency when it wishes to track implementation of measures throughout the State.

Paragraph (6) incorporates and expands current section 110(a)(2)(F)(ii)–(iv).

***3407** Paragraph (7) rewrites current section 110(a)(2)(F)(v).

Paragraph (8) rewrites current section 110(a)(2)(H).

Paragraph (9) replaces current section 110(a)(2)(I) with a simple cross-reference to part D, deleting the construction ban in the existing section. Revised construction ban provisions appear elsewhere in the bill in revisions to part D.

Paragraph (10) rewrites current section 110(a)(2)(J).

Paragraph (11) adds a new provision to the Act requiring air quality modeling as prescribed by the Adminstrator to ensure that States perform the technical work necessary to provide the basis for pollution control strategies.

Paragraph (12) rewrites current section 110(a)(2)(K) with minor revisions to be consistent with new permit fee requirements in titles I and V.

SIP provisions addressing interstate pollution.–Section 110(a)(2)(E) of the Act is replaced by new section 110(c)(4), which, together with changes made to section 126 of the Act by section 110 of the bill, improve the effectiveness of

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the Act as a means of dealing with interstate air pollution. Where prohibitions in existing section 110(a)(2)(E) apply only to emissions from a single source, the amendment includes "any other type of emissions activity," which makes the provision effective in prohibiting emissions from, for example, multiple sources, mobile sources, and area sources.

For interstate pollution to violate current law, it must "prevent attainment." Since it may be impossible to say that any single source or group of sources is the one which actually prevents attainment, the bill changes "prevent attainment or maintenance" to "contribute significantly to nonattainment or interfere with maintenance by," thus clarifying when a violation occurs.

Under existing section 110(a)(2)(E), interstate pollution that is to be prohibited under a SIP is that which leads to a violation of the Act's specifically protected interests–attainment of the ambient standards, prevention of significant deterioration, or visibility. There are many legitimate State interests that are not spelled out and explicitly protected by the Act, for example, the effect of toxic pollutants on health or the environment. The amendment in new section 110(c)(4) makes an injury to interests that may be identified by States but that are not explicitly listed in the statute–described as "an adverse effect on public health or welfare or the environment"–a violation of the Act.

EPA action on plan submissions.–The Environmental Protection Agency reports that in recent years a substantial number of SIP submissions have been incomplete or so deficient that they have not warranted further review. Newly rewritten section 110(d)(1) of the Act requires EPA to issue minimum completeness criteria that any SIP submission must meet and provides that the Agency need not review submissions that fail to meet the criteria. Where the Administrator finds that a SIP submission does not meet the minimum criteria, the State shall be treated as having failed to make the required submission for purposes of the sanctions provisions of the Act.

New section 110(d)(2) requires EPA to act on each SIP submission within twelve months of the date EPA determines (or is deemed to have determined) that the submission is complete. The four-month ***3408** period provided in current section 110(a)(2) has proved insufficient to allow EPA to conduct the necessary analyses and rulemaking proceedings.

New section 110(d)(3) authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which it meets the requirements of the Act. This provision overrules the portion of the decision Abramowitz v. EPA, 832 F. 2d 1071 (9th Cir. 1987), which held that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole.

New section 110(d)(4) provides that a finding by the administrator of the inadequacy of a SIP could renew previously applicable requirements, even if those requirements contained fixed, elapsed deadlines. The Administrator is given the authority to adjust the statutory deadlines consistent with the time originally allowed in the law for compliance with the requirements.

Federal implementation plans.–The bill in a rewritten section 110(f) of the Act, changes existing law (section 110(c) of the Act) with respect to the preparation of Federal implementation plans (FIPs). Current law requires the Administrator to prepare a FIP whenever a State fails to submit an approvable implementation plan, the plan is determined not to be in accordance with requirements of the act, or the State fails to revise its plan as required by the Act. In several instances EPA has been compelled by court orders to prepare FIPs.

The success of air pollution control under the Clean Air Act is premised on strong State and local control programs. Preparation by EPA of control plans applicable to specific areas within a State should be a last resort, but it is an important one to have available in cases where a State fails to take the required steps to achieve a health-based ambient standard.

The boundaries of extreme areas are defined to be the MSA or CMSA plus 25 miles, unless the State can show that sources in one portion of the area do not contribute to violations of the standard and there is a geographic basis for excluding that portion.

Major stationary sources of VOCs are defined to be sources that emit ten or more tons. Reasonably available control technology must be applied to every source of VOCs or NO that emits ten or more tons. Reductions of 12 percent every three years in emissions of no must be achieved.

Non-self generating areas. (New section 183 of the Act).–An ozone nonattainment area that does not contain and is not adjacent to an MSA or CMSA, if determined by the Administrator to be a non-self-generating area, need only comply with the requirements of new section 182 of the Act applicable to all ozone nonattainment areas and any additional requirements promulgated by the Administrator. An area is non-self-generating if the sources of VOCs and N0 in the area do not make a significant contribution to ozone in that area or any other area.

Sanctions for failure to comply or attain. (New section 184 of the Act).–If a State fails to submit an approvable SIP revision, the Administrator must impose a moratorium on construction or modification of major stationary sources of ozone-forming pollutants in the area; the Secretary of Transportation must limit the use of Federal highway funds to projects that will improve air quality, and the Administrator may withhold State air pollution grants.

If a State fails to implement a SIP, the same sanctions as for failure to submit an approvable plan apply. If a State fails to meet the interim percentage reductions in emissions of VOCs, or, in the case of an extreme area, NO, the construction moratorium and highway fund limitation apply. The Administrator is given authority to lower the threshold emissions amount that defines a source as a major stationary source for that area and to require the area to comply with the requirements of the next most stringent ozone classification category.

If an area fails to attain the ozone standard by the date required by law, the Administrator must reclassify the area to the next most stringent category and assure that the fee on major stationary sources is implemented in serious, severe and extreme areas.

Additional Federal ozone control measures. (New section 185 of the Act).–The Administrator is required to publish twelve new control technique guidelines (CTGs) for categories not previously covered and to review new and existing guidelines at least every four years to determine if they should be updated.

The Administrator is required to publish a CTG for VOCs emitted during the loading and unloading of petroleum products from vessels.

The Administrator is required to submit a study to Congress on emissions from commercial and consumer solvents and within two years after submitting the study, to promulgate regulations applicable to categories of these solvents that will achieve a three percent reduction in nationwide emissions of VOCs.

***3420** The Administrator is required to promulgate regulations under the Solid Waste Disposal Act to control emissions of VOCs from treatment, storage and disposal facilities that will achieve reductions of four percent in nationwide emissions of those compounds.

Control of interstate ozone pollution. (New section 186 of the Act).–The bill establishes a northeast ozone transport region consisting of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia and the District of Columbia and gives the Administrator authority to add States or portions of a State to the region or to establish additional regions if the

Administrator determines that air pollution from the States or portions to be added contribute significantly to ozone pollution in a serious, severe or extreme nonattainment area.

Within six months of enactment, the Administrator is to establish an ozone transport commission for the northeast region consisting of an air pollution control official appointed by the Governor of each State, the Administrator or a designee, and the regional administrator or designee for each EPA region containing any part of the ozone region. Decisions of the commission are to be by a majority vote of members other than EPA regional representatives.

All areas in each State in the ozone transport region are required to apply reasonably available control technology to all sources covered by control technique guidelines issued both before and after the date of enactment of the bill and to noncovered VOC sources that have the potential to emit one hundred or more tons. All areas must also implement Stage II controls at service stations that dispense more than twenty thousand gallons of gasoline per month, and all MSA's with a population of 100,000 or more must establish vehicle I/M programs. The Stage II requirement does not apply to a State that has no ozone nonattainment areas unless the Administrator determines that the controls are needed to bring about attainment in an area in an adjoining State or the Governor of the State with no nonattainment areas determines, pursuant to State law, that the requirement should apply in that State. Also, the Administrator may exempt any area within a State from the requirements of the bill applicable to the ozone region if the State demonstrates that sources within the area do not contribute to nonattainment in any other area in the ozone region.

The commission may develop a plan of additional control measures to be applied within all or part of the region if it determines that the measures are needed to bring any area in the region into attainment. The plan must be transmitted to the Administrator who, after publishing it and giving opportunity for written comments for ninety days, must, within one hundred twenty days after receipt either approve, disapprove or partially approve and partially disapprove, the plan. The Administrator must publish the decision and must explain why any disapproved part is not necessary to achieve attainment in any area in the region. For any approved plan or part of a plan, the Administrator must require any part of the region to which the plan applies to revise the applicable SIP to include the approved control measures in the commission's plan.

The commission may exempt a State or portion of a State from the region if the commission determines that the State or portion ***3421** will not contribute significantly to ozone nonattainment in any area.

DISCUSSION

Classification of ozone areas.–Any area the ozone design value of which is 0.18 ppm but less than 0.264 ppm is classified as a severe area. Any area the design value of which is below 0.18 but greater than 0.144, for example an area whose design value is 0.179, is classified as a serious area. The following list shows which areas would be classified as extreme, severe, serious or moderate, respectively, under new section 181 of the Act, based on ozone data from 1986–88. Several changes in the classification of particular areas could occur, depending upon air quality in 1990, the probable year of enactment.

CLASSIFICATION OF AREAS VIOLATING OZONE STANDARD

Extreme area

Los Angeles-Anaheim-Riverside, CA.

Severe areas

Baltimore, MD.

Commercial and consumer solvents.–As a result of earlier efforts to reduce the emissions of VOCs in nonattainment areas, most large stationary point sources have achieved significant VOC emissions reductions. As a result of the Federal motor vehicle control program and EPA's recent limit on gasoline volatility to 10.5 pounds per square inch, VOC emissions from mobile sources are expected to continue to decrease in the near future. With the additional provisions in the bill such as gasoline volatility limits at nine pounds per square inch and tighter tailpipe standards, vehicle emissions will continue to go down or at least remain at existing levels over the next decade or two. Thus, in ozone nonattainment ***3434** areas commercial and consumer solvents, which emit VOCs when they are used, will be the largest uncontrolled sources of VOC emissions. They are already estimated by the OTA to constitute one quarter of all VOC emissions in nonattainment areas.

The bill requires EPA to conduct a two-year study to identify the products which emit VOCs, to estimate the contribution of different products to total VOC emissions, and to identify potential control alternatives and their costs. After completing the study, EPA is to promulgate regulations which achieve a reduction of VOCs equal to three percent of the national inventory of VOC emissions. The Agency is not required to regulate each and every category or product; it should seek to achieve the required reduction in nationwide VOC emissions in the most effective, least disruptive way.

Regulations could take any number of forms. As examples, they could require that existing controls be applied to smaller sources–this would be most appropriate with respect to industrial and commercial use of solvents; they could limit the VOC content in certain solvents; they could specify directions for use, consumption, storage or disposal; or they could impose fees which recoup costs of regulation or charges (not necessarily limited to the costs of regulation) that provide an economic incentive to achieve reduced use of VOCs in products. While EPA has, to date, little experience with controlling emissions from these products, both the South Coast Air Quality Management District and the city of New York have been working for a few years to devise ways to reduce these emissions. EPA can benefit from the work done by others, but it is clear that for certain types of products that are marketed nationwide, innovative action at the Federal level is needed.

Ozone transport region.–Ozone transport is a serious problem for affected nonattainment areas. Peak ozone concentrations occur on successive hot days when ozone forms most rapidly and accumulates over broad regions. Areas in some States may be unable to attain the ozone standard despite implementation of stringent emissions control because of pollution transported into such areas from other States. Areas in States where the pollution is actually generated may, because atmospheric conditions transport pollution out of the region, experience ozone levels that are not as high as they would have been had the pollution remained within the State's borders. Some of these areas may be attaining the ozone standard and yet contribute substantially to ozone levels in downwind areas.

The transport problem in the northeast, and perhaps other regions as well, is serious enough that additional efforts must be made on an interstate basis to control emissions, including emissions from attainment areas.

Control of emissions of nitrogen ozides as well as hydrocarbons is needed to protect against transported ozone problems. A growing consensus exists that NO as well as hydrocarbon emissions play a critical role in the formation of ozone and that emissions of both NO and hydrocarbons must be reduced to attain air quality which protects public health. Some modeling studies suggest nitric oxide emissions, the major fraction of most NO emissions, can act to scavenge ozone and thus reduce concentrations near the source. Other modeling studies and ambient measurements, however, show ***3435** that farther downwind, the same NO can actually enhance ozone formation. A more balanced approach of controlling both VOCs and NO regionwide will tend to ensure that ozone improvements near the source is accompanied by ozone improvements in downwind areas. A critical implication of these findings is that without controls on nitrogen oxides the current control policies will simply change the urban ozone problem into a regional one.

The only available empirical evidence of this is from Southern California, where emissions of nitrogen oxides in downtown Los Angeles react with ozone in downtown areas to form excess nitrogen dioxide. This nitrogen dioxide photodecomposes into increased ozone during transport of the polluted air mass from the downtown area into the mountain and desert regions of Southern California.

Transport has been documented in the northeast with EPA time sequence maps. The maps illustrate the typical flow of an ozone plume in the northeast as it moves from New York City into New England. In the early morning, the plume centers were over southern New England. By mid-day the plume extends to central New England, Cape Cod, and western Massachusetts. By late afternoon, the episode pushes toward northern New England. As it moves north, the plume combines with other emissions centers in New England.

According to the 1985 NAPAP inventory, NO and hydrocarbon emissions from states directly upwind of the eight states in the northeast states for coordinated air use management (NESCAUM) were 100 percent and 79 percent greater, respectively, than the total emissions from the NESCAUM states (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont). NESCAUM estimates that upwind emissions, like emissions in its area, must be reduced by at least 40–50 percent to ensure future attainment of the ozone health standard.

Clear proof of the transport problem is Acadia National Park, which has been a nonattainment area. This popular national park on the coast of Maine attracts visitors because of its vistas and clean air. This area does not on its own produce enough emissions to violate the ozone standard. Much of the air over Acadia travels up the coast through urban centers of the eastern United States. While it is not currently possible to identify with certainty the exact origins of the pollution, control of downwind sources will help assure that this and other national parks meet and maintain compliance with national air quality standards. The map shown in figure 1–1 compiled for the summer of 1988 by NESCAUM illustrates how widespread and severe peak ozone concentrations can be in rural and urban areas.

OMNIMAP is a photochemical dispersion model run for the New York, New Jersey, and Connecticut metropolitan area. The model suggests that even if all emissions sources were eliminated within the tri-state area, violations of the ozone standard would still occur. This means substantial reductions in emissions from areas upwind from the New York metropolitan area must be achieved if this area is to attain the air quality standards.

EPA's Regional Oxidant Model (ROM) is operating and will assist the work of the regional commission. This is a computer-based ***3436** model of ozone transport patterns for many eastern cities and a tool that should be available to the commission for use in determining where additional VOC and NO control measures may be necessary to achieve downwind improvements in air quality. Preliminary EPA regional ozone modeling analyses indicate that achieving the federal clean air standard for ozone will require substantial emissions reductions within the northeast states by as much as 60 percent for hydrocarbons and a substantial reduction for nitrogen oxides. This is in addition to 30–40 percent reduction in hydrocarbons already achieved.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

ROM and urban-scale photechemical dispersion models are useful tools that should be utilized but they are not the solution to the air pollution problems. There are technical limitations to all models both in precision and in interpretation of the results. Actions that will reduce emissions must occur while studies and modeling continue in order to reduce exposure to ozone in the northeast corridor.

ROM should continue to be a funding priority for EPA until EPA and the States are satisfied that they have gleaned all the useful information from ROM to develop SIPs. In addition, the States will be using urban photochemical dispersion models building upon the information developed by ROM. If EPA needs additional funds to continue to develop and run ROM and assist the States with urban airshed models, then the agency should come forward with a request for

additional funds. If EPA has reasons for not continuing to fund projects using these models, notification to States in the ozone transport region and to Congress is warranted.

***3437** A regional ozone transport commission is one important way to address these problems identified by modeling and monitoring. State air quality directors in the northeast have been cooperating for several years to develop a regional solution to the ozone problem. Lack of support by EPA and lack of authority to institute needed regional controls (both in attainment and nonattainment areas) have prevented this effort from being more successful. As an indication of the seriousness with which the northeastern States regard the transport problem, the NESCAUM States initiated an effort in 1986 to limit the summertime volatility of gasoline through consistent State regulations. In an action unique in air quality regulation, the State environmental commissioners signed a Memorandum of Understanding in November 1987 agreeing to propose similar State volatility regulations. By Spring, 1989, seven States had promulgated consistent regulations to limit gasoline volatility. These States enforced regulations for the first time this past summer. EPA's final volatility regulation would have reduced emissions in the northeast only half as much as the States' actions achieved.

Another effort at regional cooperation resulted in a consensus on a broader range of control measures. In August, 1988, a Regional Ozone Transport Group (ROTG) was organized by EPA to provide a forum for Federal and State environmental officials to discuss the dimensions of regional oxidant transport in the northeastern U.S. and to explore potential abatement mechanisms. At a July, 1989 meeting of the ROTG, the State representatives from Massachusetts, Connecticut, New York, New Jersey, and Pennsylvania expressed strong support for the ozone strategy set forth in a document entitled "Program Concepts for Northeast Ozone Attainment." The report recognizes that it will be necessary to implement a combination of control measures on national, regional and local levels and that, in light of the apparent magnitude of emission reductions needed and the limited reductions available from identified control options, the risk of over-control is negligible.

The initial list of controls for the northeast transport region reflects the recommendations made by the State ROTG representatives for regional action. They represent reasonable availably cost-effective controls which will reduce ozone precursors throughout the region.

The commission is authorized in the bill to develop plans for imposing additional control measures throughout the region or in selected parts and to submit such plans to the Administrator. The Administrator is to seek comment on any proposed controls and issue a SIP call requiring the areas affected by the plan to revise their SIPs to include the controls unless the Administrator determines the additional controls are not needed in order for any area in the region to attain the ozone standard by the attainment date applicable to that area. The Administrator may require SIPs to include portions of a commission's plan and not others if the latter are not needed to bring about timely attainment in any area.

***3438** ADDITIONAL REQUIREMENTS FOR CARBON MONOXIDE NONATTAINMENT AREAS (SECTION 108)

SUMMARY

Section 108 adds a new subpart 3 to part D of title I of the Clean Air Act. Part D was added to the Act in 1977 and includes specific remedial measures for areas which continue in nonattainment for ozone, carbon monoxide and particulate matter. The new subpart 3 specifically addresses the carbon monoxide (CO) nonattainment problem and includes four new sections: section 187 (classification and deadline extensions); section 188 (requirements for all carbon monoxide nonattainment areas); section 189 (requirements for serious carbon monoxide nonattainment areas only); and section 190 (sanctions for failure to implement the requirements of the Act).

Based on 1987 and 1988 air quality data there are 44 areas which currently fail to attain the national primary ambient air quality standard for carbon monoxide which is 9 parts per million (ppm) averaged over eight hours to be exceeded not

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Currently, the Act specifies the allowable increases or "increments" in terms of total suspended particulates. When the Administrator revised the ambient air quality standard for particulate matter and adopted PM–10, rather than total suspended particulates, as the pollutant to be regulated, he had no authority to change the pollutant on which PSD increments are based. The authority given the Administrator is limited by the condition that any substituted maximum allowable increase, based on PM–10, must be at least as stringent in effect with respect to sources seeking PSD permits, as the total suspended particulate standard it replaces.

INTERSTATE POLLUTION (SECTION 110)

SUMMARY

The bill amends section 126 of the Act by adding a new subsection (d) which states that emission of an air pollutant which, by itself or in combination, reaction, or transformation, adversely affects public health or welfare in another State, is a violation of the section.

Section 126 is also amended by removing the reference to national ambient air quality standards in subsection (a) and by including groups of sources as actionable entities under subsection (b).

The bill amends section 302(h) of the Clean Air Act by inserting the phrases "precipitation," and "whether caused by transformation, conversion, or combination with other air pollutants."

DISCUSSION

The bill strikes "in excess of ambient standards" from section 126(a)(1)(B) of the Act. Under current law, interstate pollution must lead to a violation of the ambient standard to be actionable under section 126. It may not be possible to specify a source or group of sources that cause nonattainment. The amendment eliminates the need to establish a casual relationship between a polluter and violation of an ambient standard.

Current law allows section 126 to be used only for violations of section 110(a)(2)(E)(i), which relates to the preparation of SIP. Thus, a State being injured by another State's pollution can file a complaint about the offending State's SIP, but not the pollution itself. ***3462** The amendment to section 126(b) adding "or this section", is essentially procedural in nature and would allow a State to complain about the pollution itself, not just a defect in the offending State's SIP.

Under current law the definition of "welfare" protected by the Act may not include the quality of the precipitation, itself. It also may not include damage that results from conversion of a pollutant from one chemical to another–which happens with both acid rain and smog. The amendment to section 302(h) explicitly includes precipitation as a protected value and clarifies that transported, converted, and combined pollutants are all covered.

The Act currently allows a State to file a petition with the Administrator complaining of interstate air pollution, but not to file a lawsuit for violation of section 126. The amendment to section 304 would allow a State, and citizens, to sue in Federal district court for violation of section 126.

OUTER CONTINENTAL SHELF ACTIVITIES (SECTION 111)

SUMMARY

The bill adds a new section 327 to the Act that requires the Administrator, within 12 months of enactment, to promulgate requirements applicable to air pollution from Outer Continental Shelf (OCS) sources. The requirements must

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Public Law 101-549
101st Congress

An Act

To amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes.

Nov. 15, 1990
[S. 1630]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Air pollution control.

TITLE I—PROVISIONS FOR ATTAINMENT AND MAINTENANCE OF NATIONAL AMBIENT AIR QUALITY STANDARDS

Sec. 101. General planning requirements.
Sec. 102. General provisions for nonattainment areas.
Sec. 103. Additional provisions for ozone nonattainment areas.
Sec. 104. Additional provisions for carbon monoxide nonattainment areas.
Sec. 105. Additional provisions for particulate matter (PM-10) nonattainment areas.
Sec. 106. Additional provisions for areas designated nonattainment for sulfur oxides, nitrogen dioxide, and lead.
Sec. 107. Provisions related to Indian tribes.
Sec. 108. Miscellaneous provisions.
Sec. 109. Interstate pollution.
Sec. 110. Conforming amendments.
Sec. 111. Transportation system impacts on clean air.

SEC. 101. GENERAL PLANNING REQUIREMENTS.

Inter-governmental relations.

(a) AREA DESIGNATIONS.—Section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) is amended to read as follows:

"(d) DESIGNATIONS.—

"(1) DESIGNATIONS GENERALLY.—

"(A) SUBMISSION BY GOVERNORS OF INITIAL DESIGNATIONS FOLLOWING PROMULGATION OF NEW OR REVISED STANDARDS.—By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section 109, the Governor of each State shall (and at any other time the Governor of a State deems appropriate the Governor may) submit to the Administrator a list of all areas (or portions thereof) in the State, designating as—

"(i) nonattainment, any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant,

"(ii) attainment, any area (other than an area identified in clause (i)) that meets the national primary or secondary ambient air quality standard for the pollutant, or

"(iii) unclassifiable, any area that cannot be classified on the basis of available information as meeting or not

49-139 O - 90 - 1 (549)

"(5) DESIGNATIONS FOR LEAD.—The Administrator may, in the Administrator's discretion at any time the Administrator deems appropriate, require a State to designate areas (or portions thereof) with respect to the national ambient air quality standard for lead in effect as of the date of the enactment of the Clean Air Act Amendments of 1990, in accordance with the procedures under subparagraphs (A) and (B) of paragraph (1), except that in applying subparagraph (B)(i) of paragraph (1) the phrase '2 years from the date of promulgation of the new or revised national ambient air quality standard' shall be replaced by the phrase '1 year from the date the Administrator notifies the State of the requirement to designate areas with respect to the standard for lead'.".

(b) GENERAL REQUIREMENTS FOR IMPLEMENTATION PLANS.—Section 110(a)(2) of the Clean Air Act (42 U.S.C. 7410(a)(2)) is amended to read as follows:

"(2) Each implementation plan submitted by a State under this Act shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—

"(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act;

"(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

"(i) monitor, compile, and analyze data on ambient air quality, and

"(ii) upon request, make such data available to the Administrator;

"(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;

"(D) contain adequate provisions—

"(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

"(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

"(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,

"(ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement);

"(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments

for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

"(F) require, as may be prescribed by the Administrator—

"(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

Reports.

"(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

Public information.

"(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;

"(G) provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;

"(H) provide for revision of such plan—

"(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

"(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act;

"(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);

"(J) meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection);

"(K) provide for—

"(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

"(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

"(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover—

"(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

"(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V; and

"(M) provide for consultation and participation by local political subdivisions affected by the plan.".

(c) ADDITIONAL PROVISIONS.—Section 110 of the Clean Air Act (42 U.S.C. 7410) is amended by adding the following at the end thereof:

"(k) ENVIRONMENTAL PROTECTION AGENCY ACTION ON PLAN SUBMISSIONS.—

"(1) COMPLETENESS OF PLAN SUBMISSIONS.—

"(A) COMPLETENESS CRITERIA.—Within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this Act.

"(B) COMPLETENESS FINDING.—Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

"(C) EFFECT OF FINDING OF INCOMPLETENESS.—Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

"(2) DEADLINE FOR ACTION.—Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

"(3) FULL AND PARTIAL APPROVAL AND DISAPPROVAL.—In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this Act. If a portion of the plan revision meets all the applicable requirements of this Act, the Administrator may

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approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this Act until the Administrator approves the entire plan revision as complying with the applicable requirements of this Act.

"(4) CONDITIONAL APPROVAL.—The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

"(5) CALLS FOR PLAN REVISIONS.—Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in section 176A or section 184, or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this Act to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D, unless such date has elapsed).

Public information.

"(6) CORRECTIONS.—Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

Public information.

"(l) PLAN REVISIONS.—Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

"(m) SANCTIONS.—The Administrator may 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 paragraphs (1) through (4), respectively, of section 179(a) in relation to any plan or plan item (as that term is defined by the Administrator) required under this Act, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this Act relating to such plan or plan item are met. The Administrator shall, by rule, establish criteria for exercising his authority under the previous

sentence with respect to any deficiency referred to in section 179(a) to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in section 179(a), such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

"(n) SAVINGS CLAUSES.—

"(1) EXISTING PLAN PROVISIONS.—Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to this section as in effect before the date of the enactment of the Clean Air Act Amendments of 1990 shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this Act.

"(2) ATTAINMENT DATES.—For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State—

"(A) in response to the promulgation or revision of a national primary ambient air quality standard in effect on the date of the enactment of the Clean Air Act Amendments of 1990, or

"(B) in response to a finding of substantial inadequacy under subsection (a)(2) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990),

shall provide for attainment of the national primary ambient air quality standards within 3 years of the date of the enactment of the Clean Air Act Amendments of 1990 or within 5 years of issuance of such finding of substantial inadequacy, whichever is later.

"(3) RETENTION OF CONSTRUCTION MORATORIUM IN CERTAIN AREAS.—In the case of an area to which, immediately before the date of the enactment of the Clean Air Act Amendments of 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) applied by virtue of a finding of the Administrator that the State containing such area had not submitted an implementation plan meeting the requirements of section 172(b)(6) (relating to establishment of a permit program) (as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1990) or 172(a)(1) (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of section 172(c)(5) (relating to permit programs) or subpart 5 of part D (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.".

(d) CONFORMING AMENDMENTS.—Section 110 of the Clean Air Act (42 U.S.C. 7410) is amended as follows:

(1) Strike out subparagraph (A) and subparagraph (D) of section 110(a)(3).

(2) Strike out paragraph (4) of section 110(a).

(3) In subsection (c)—

(A) strike out subparagraph (A) of paragraph (2);

(B) strike out paragraph (2)(C);

(C) strike out paragraph (4); and

(D) in paragraph (5)(B) strike out "(including the written evidence required by part D),".

(4) Strike subsection (d) and in section 302 (42 U.S.C. 7602) add the following new subsection after subsection (p):

"(q) For purposes of this Act, the term 'applicable implementation plan' means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of this Act.".

(5) strike out subsection (e).

(6) In subsection (g), strike "the required four month period" and insert "12 months of submission of the proposed plan revision".

(7) In subsection (h)—

(A) strike "one year after the date of enactment of the Clean Air Act Amendments of 1977 and annually thereafter" and insert "5 years after the date of the enactment of the Clean Air Act Amendments of 1990, and every 3 years thereafter"; and

(B) strike the second sentence of paragraph (1).

(8) In subsection (a)(1) strike "nine months" each place it appears and insert "3 years (or such shorter period as the Administrator may prescribe)".

(e) FEDERAL FACILITIES.—The second sentence of section 118(a) of the Clean Air Act (42 U.S.C. 7418(a)) is amended to read as follows: "The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to any requirement to pay a fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program, (C) to the exercise of any Federal, State, or local administrative authority, and (D) to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner.".

Reporting and recordkeeping requirements.

(f) CONFORMITY REQUIREMENTS.—Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) is amended by striking "(1)", "(2)", "(3)" and "(4)" where they appear, by inserting "(1)" after "(c)", striking "a plan" each place it appears and inserting in lieu thereof "an implementation plan" each place it appears and by adding the following at the end thereof: "Conformity to an implementation plan means—

"(A) conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and

"(B) that such activities will not—

"(i) cause or contribute to any new violation of any standard in any area;

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before redesignation of the area as an attainment area. The failure of any area redesignated as an attainment area to maintain the national ambient air quality standard concerned shall not result in a requirement that the State revise its State implementation plan unless the Administrator, in the Administrator's discretion, requires the State to submit a revised State implementation plan.".

(f) INTERSTATE TRANSPORT PROVISIONS.—

(1) INTERSTATE TRANSPORT COMMISSIONS.—After section 176 of the Clean Air Act (42 U.S.C. 7506) insert:

"SEC. 176A. INTERSTATE TRANSPORT COMMISSIONS.

42 USC 7506a.

"(a) AUTHORITY TO ESTABLISH INTERSTATE TRANSPORT REGIONS.—Whenever, on the Administrator's own motion or by petition from the Governor of any State, the Administrator has reason to believe that the interstate transport of air pollutants from one or more States contributes significantly to a violation of a national ambient air quality standard in one or more other States, the Administrator may establish, by rule, a transport region for such pollutant that includes such States. The Administrator, on the Administrator's own motion or upon petition from the Governor of any State, or upon the recommendation of a transport commission established under subsection (b), may—

"(1) add any State or portion of a State to any region established under this subsection whenever the Administrator has reason to believe that the interstate transport of air pollutants from such State significantly contributes to a violation of the standard in the transport region, or

"(2) remove any State or portion of a State from the region whenever the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the attainment of the standard in any area in the region.

The Administrator shall approve or disapprove any such petition or recommendation within 18 months of its receipt. The Administrator shall establish appropriate proceedings for public participation regarding such petitions and motions, including notice and comment.

"(b) TRANSPORT COMMISSIONS.—

"(1) ESTABLISHMENT.—Whenever the Administrator establishes a transport region under subsection (a), the Administrator shall establish a transport commission comprised of (at a minimum) each of the following members:

"(A) The Governor of each State in the region or the designee of each such Governor.

"(B) The Administrator or the Administrator's designee.

"(C) The Regional Administrator (or the Administrator's designee) for each Regional Office for each Environmental Protection Agency Region affected by the transport region concerned.

"(D) An air pollution control official representing each State in the region, appointed by the Governor.

Decisions of, and recommendations and requests to, the Administrator by each transport commission may be made only by a majority vote of all members other than the Administrator and the Regional Administrators (or designees thereof).

"(2) RECOMMENDATIONS.—The transport commission shall assess the degree of interstate transport of the pollutant or

precursors to the pollutant throughout the transport region, assess strategies for mitigating the interstate pollution, and recommend to the Administrator such measures as the Commission determines to be necessary to ensure that the plans for the relevant States meet the requirements of section 110(a)(2)(D). Such commission shall not be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

"(c) COMMISSION REQUESTS.—A transport commission established under subsection (b) may request the Administrator to issue a finding under section 110(k)(5) that the implementation plan for one or more of the States in the transport region is substantially inadequate to meet the requirements of section 110(a)(2)(D). The Administrator shall approve, disapprove, or partially approve and partially disapprove such a request within 18 months of its receipt and, to the extent the Administrator approves such request, issue the finding under section 110(k)(5) at the time of such approval. In acting on such request, the Administrator shall provide an opportunity for public participation and shall address each specific recommendation made by the commission. Approval or disapproval of such a request shall constitute final agency action within the meaning of section 307(b).".

(2) AMENDMENTS CONFORMING TO TRANSPORT PROVISIONS.—Section 106 of the Clean Air Act (42 U.S.C. 7406) is amended as follows:

(A) Insert "or of implementing section 176A (relating to control of interstate air pollution) or section 184 (relating to control of interstate ozone pollution)" immediately following "section 107".

(B) Insert "any commission established under section 176A (relating to control of interstate air pollution) or section 184 (relating to control of interstate ozone pollution) or" immediately following "program costs of".

(C) Insert "or such commission" in the last sentence immediately following "such agency".

(D) Insert "or commission" at the end thereof, immediately before the period.

(g) SANCTIONS.—After section 178 of the Clean Air Act (42 U.S.C. 7508) insert:

42 USC 7509.

"SEC. 179. SANCTIONS AND CONSEQUENCES OF FAILURE TO ATTAIN.

"(a) STATE FAILURE.—For any implementation plan or plan revision required under this part (or required in response to a finding of substantial inadequacy as described in section 110(k)(5)), if the Administrator—

"(1) finds that a State has failed, for an area designated nonattainment under section 107(d), to submit a plan, or to submit 1 or more of the elements (as determined by the Administrator) required by the provisions of this 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 section 110(k),

"(2) disapproves a submission under section 110(k), for an area designated nonattainment under section 107, based on the submission's failure to meet one or more of the elements required by the provisions of this Act applicable to such an area,

"(3)(A) determines that a State has failed to make any submission as may be required under this Act, other than one de-

ance with the tank vessel standards prescribed under paragraph (1)(A).

"(B) The Secretary of the Department in which the Coast Guard is operating shall ensure compliance with the regulations issued under paragraph (2).

"(4) STATE OR LOCAL STANDARDS.—After the Administrator promulgates standards under this section, no State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions from tank vessels subject to regulation under paragraph (1) unless such standard is no less stringent than the standards promulgated under paragraph (1).

"(5) ENFORCEMENT.—Any standard established under paragraph (1)(A) shall be treated, for purposes of enforcement of this Act, as a standard under section 111 and any violation of such standard shall be treated as a violation of a requirement of section 111(e).

"(g) OZONE DESIGN VALUE STUDY.—The Administrator shall conduct a study of whether the methodology in use by the Environmental Protection Agency as of the date of the enactment of the Clean Air Act Amendments of 1990 for establishing a design value for ozone provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The Administrator shall obtain input from States, local subdivisions thereof, and others. The study shall be completed and a report submitted to Congress not later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990. The results of the study shall be subject to peer and public review before submitting it to Congress.

Intergovernmental relations. Reports.

Public information.

42 USC 7511c.

State listing.

"SEC. 184. CONTROL OF INTERSTATE OZONE AIR POLLUTION.

"(a) OZONE TRANSPORT REGIONS.—A single transport region for ozone (within the meaning of section 176A(a)), comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia, is hereby established by operation of law. The provisions of section 176A(a) (1) and (2) shall apply with respect to the transport region established under this section and any other transport region established for ozone, except to the extent inconsistent with the provisions of this section. The Administrator shall convene the commission required (under section 176A(b)) as a result of the establishment of such region within 6 months of the date of the enactment of the Clean Air Act Amendments of 1990.

"(b) PLAN PROVISIONS FOR STATES IN OZONE TRANSPORT REGIONS.—(1) In accordance with section 110, not later than 2 years after the date of the enactment of the Clean Air Act Amendments of 1990 (or 9 months after the subsequent inclusion of a State in a transport region established for ozone), each State included within a transport region established for ozone shall submit a State implementation plan or revision thereof to the Administrator which requires the following—

"(A) that each area in such State that is in an ozone transport region, and that is a metropolitan statistical area or part thereof with a population of 100,000 or more comply with the provisions of section 182(c)(2)(A) (pertaining to enhanced vehicle inspection and maintenance programs); and

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"(B) implementation of reasonably available control technology with respect to all sources of volatile organic compounds in the State covered by a control techniques guideline issued before or after the date of the enactment of the Clean Air Act Amendments of 1990.

"(2) Within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through vehicle refueling controls contained in section 182(b)(3), and such measures or such vehicle refueling controls shall be implemented in accordance with the provisions of this section. Notwithstanding other deadlines in this section, the applicable implementation plan shall be revised to reflect such measures within 1 year of completion of the study. For purposes of this section any stationary source that emits or has the potential to emit at least 50 tons per year of volatile organic compounds shall be considered a major stationary source and subject to the requirements which would be applicable to major stationary sources if the area were classified as a Moderate nonattainment area.

"(c) ADDITIONAL CONTROL MEASURES.—

"(1) RECOMMENDATIONS.—Upon petition of any State within a transport region established for ozone, and based on a majority vote of the Governors on the Commission (or their designees), the Commission may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart. The commission shall transmit such recommendations to the Administrator.

"(2) NOTICE AND REVIEW.—Whenever the Administrator receives recommendations prepared by a commission pursuant to paragraph (1) (the date of receipt of which shall hereinafter in this section be referred to as the 'receipt date'), the Administrator shall—

Federal Register, publication.

"(A) immediately publish in the Federal Register a notice stating that the recommendations are available and provide an opportunity for public hearing within 90 days beginning on the receipt date; and

"(B) commence a review of the recommendations to determine whether the control measures in the recommendations are necessary to bring any area in such region into attainment by the dates provided by this subpart and are otherwise consistent with this Act.

"(3) CONSULTATION.—In undertaking the review required under paragraph (2)(B), the Administrator shall consult with members of the commission of the affected States and shall take into account the data, views, and comments received pursuant to paragraph (2)(A).

Federal Register, publication.

"(4) APPROVAL AND DISAPPROVAL.—Within 9 months after the receipt date, the Administrator shall (A) determine whether to approve, disapprove, or partially disapprove and partially approve the recommendations; (B) notify the commission in writing of such approval, disapproval, or partial disapproval; and (C) publish such determination in the Federal Register. If

the Administrator disapproves or partially disapproves the recommendations, the Administrator shall specify—

"(i) why any disapproved additional control measures are not necessary to bring any area in such region into attainment by the dates provided by this subpart or are otherwise not consistent with the Act; and

"(ii) recommendations concerning equal or more effective actions that could be taken by the commission to conform the disapproved portion of the recommendations to the requirements of this section.

"(5) FINDING.—Upon approval or partial approval of recommendations submitted by a commission, the Administrator shall issue to each State which is included in the transport region and to which a requirement of the approved plan applies, a finding under section 110(k)(5) that the implementation plan for such State is inadequate to meet the requirements of section 110(a)(2)(D). Such finding shall require each such State to revise its implementation plan to include the approved additional control measures within one year after the finding is issued.

"(d) BEST AVAILABLE AIR QUALITY MONITORING AND MODELING.—For purposes of this section, not later than 6 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate criteria for purposes of determining the contribution of sources in one area to concentrations of ozone in another area which is a nonattainment area for ozone. Such criteria shall require that the best available air quality monitoring and modeling techniques be used for purposes of making such determinations.

42 USC 7511d.

"SEC. 185. ENFORCEMENT FOR SEVERE AND EXTREME OZONE NONATTAINMENT AREAS FOR FAILURE TO ATTAIN.

"(a) GENERAL RULE.—Each implementation plan revision required under section 182 (d) and (e) (relating to the attainment plan for Severe and Extreme ozone nonattainment areas) shall provide that, if the area to which such plan revision applies has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date, each major stationary source of VOCs located in the area shall, except as otherwise provided under subsection (c), pay a fee to the State as a penalty for such failure, computed in accordance with subsection (b), for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. Each such plan revision should include procedures for assessment and collection of such fees.

"(b) COMPUTATION OF FEE.—

"(1) FEE AMOUNT.—The fee shall equal $5,000, adjusted in accordance with paragraph (3), per ton of VOC emitted by the source during the calendar year in excess of 80 percent of the baseline amount, computed under paragraph (2).

"(2) BASELINE AMOUNT.—For purposes of this section, the baseline amount shall be computed, in accordance with such guidance as the Administrator may provide, as the lower of the amount of actual VOC emissions ('actuals') or VOC emissions allowed under the permit applicable to the source (or, if no such permit has been issued for the attainment year, the amount of VOC emissions allowed under the applicable implementation plan ('allowables')) during the attainment year. Notwithstanding the preceding sentence, the Administrator may issue guid-

CERTIFICATE OF SERVICE

I certify that on May 15, 2018, the foregoing Addendum to the Opening Proof Brief of Petitioners was electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit through the Court's CM/ECF system, which effected service upon counsel of record through the Court's system.

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