UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

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MEMORANDUM

SUBJECT: Public Hearing Requirements for 1990 Base-Year Emissions Inventories for Ozone and Carbon Monoxide Nonattainment Areas

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It has come to the attention of the Office of Air Quality Planning and Standards that a number of States are confused about whether they need to follow the public hearing procedures for submittal of the emissions inventory. After several discussions with the Office of General Counsel, we believe that the emissions inventories are considered a part of the State implementation plan (SIP) under the amended Clean Air Act (Act) and, therefore, are subject to a public hearing requirement at the State level. This memorandum provides guidance on how the States can meet the requirement for public participation in the development of the 1990 base-year emissions inventories.

Traditionally, the States submitted their emissions inventories along with other elements of the SIP. In some instances, these inventories may not have been considered as a part of the SIP. Although the provisions of the amended Act do not refer to the emissions inventory as a SIP revision, they do refer to it as a plan element and a plan provision [see sections 182(a)(1)(A) and 172(c)(3)]. Therefore, the emissions inventory is a plan submittal that must be approved or disapproved under section 110(k) and must meet the requirements of section

110(a)(2), including the requirement that it was subject to a public hearing at the State level.

Moreover, we believe that there are policy reasons supporting the decision that the emissions inventory is to be approved into the SIP. The emissions inventory must be used as the basis for the rate-of-progress plan for areas classified as moderate or above. Additionally, all nonattainment areas seeking redesignation to attainment will rely on an emissions inventory for purposes of submitting a maintenance plan under section 175(A). Because the emissions inventory plays such a fundamental role in determining the reductions necessary to attain and maintain the standard, it needs to receive full public scrutiny and be formally incorporated into the SIP.

However, because the regulatory consequences of the inventories are delayed, we have determined that it is appropriate to provide a "de minimis" deferral of the State public hearing requirement up to such time as a public hearing is held on the related regulatory provisions. For areas classified as moderate or above, the State would need to provide EPA with verification that a public hearing was held for the emissions inventory no later than the time the State submits the rate-of-progress plan. For marginal areas, such verification would be due when and if the State submits a maintenance plan for redesignation. However, to the extent a marginal area is "bumped-up" and, therefore, is required to submit a rate-of-progress plan, the verification would be due as for moderate and above areas.

Since EPA is providing a "de minimis" deferral of the public hearing requirement, it is also appropriate to provide a "de minimis" deferral of the requirement for EPA to approve or disapprove such submittal within 12 months of the time EPA determines the submittal is complete. Therefore, EPA will publish the emissions inventories for public review after the November 15, 1992 submittal date, but EPA will defer section 110(k) approval action on the submittals until no later than the time at which they are submitted with the rate-of-progress plan or maintenance plan. Please note, however, that if the emissions inventory submittal does not otherwise meet the completeness criteria (i.e., aside from the deferred public hearing requirement), EPA may make a finding of incompleteness pursuant to sections 110(k)(1) and 179(a)(1). Such a finding would trigger the 18-month sanction clock. A memorandum will be forthcoming which addresses issues on completeness determinations, parallel processing, and submittal of commitments.

This issue is not relevant for carbon monoxide (CO) nonattainment areas, since CO areas with design values greater than 12.7 ppm must submit the entire SIP (emissions inventories,

attainment demonstrations, and control strategies) by November 15, 1992, and EPA expects the emissions inventories to have gone through the public hearing process as part of the full CO SIP. Emissions inventories for CO areas with design values of 12.7 ppm and below have no regulatory impacts at the time of the November 15, 1992 submittals. Like marginal ozone areas, CO areas with design values 12.7 ppm and below would be required to subject the emissions inventory to the public hearing and adoption process if the area attains the CO NAAQS and subsequently develops a redesignation request and associated maintenance plan, or if the area fails to attain the standard by December 31, 1995 and is reclassified to serious and therefore required to submit an attainment plan.

Certain concerns have been raised regarding this interpretation. First, some Regions believe that imposing the public hearing requirement so late in the process will have the ramification of delaying the submittal of the 1990 base-year emissions inventories by as much as 18 months. Such a delay would in turn delay the development of the 15 percent plans and the full SIP's. Therefore, the above proposal allows submission of the emissions inventories prior to the public hearing process. States would then complete the public hearing and adoption process on the emissions inventory prior to the submittal of the rate-of-progress plans on November 15, 1993 because this is the point at which these emissions inventories take on regulatory status. This approach would not create significant delays in the emissions inventory and SIP development process and would allow a reasonable time for the States to complete the public hearing and adoption process. Under this approach, EPA could parallel process the emissions inventories, proposing approval of the inventories, and providing that final approval will not occur until the States revise the inventories to address public comments. In fact, we encourage Regional Offices to parallel process the emissions inventories for moderate and above ozone areas which are developing their rate-of-progress plan and for any ozone or CO area seeking to redesignate to attainment.

Several Regions have raised additional concerns with the requirement that the emissions inventory be approved into the SIP. One such concern is that the emissions inventory will be subject to a significant amount of questioning concerning the details, assumptions, and calculation methods. Although this may be true, we believe that it is a necessary result. As previously stated, the emissions inventory will be the basis for control measures, trading, banking and other Act programs. Therefore, the public should have an opportunity to closely scrutinize the inventory before the State develops and implements those aspects of its SIP.

A third major concern is subsequent revisions to the emissions inventories and the need to go through the SIP revision

process. We recognize that in certain cases, a few major changes or numerous minor changes to the emissions inventory will impact the 15 percent reduction calculation and will thus require a revision to the control strategy. In such cases, all changes could be bundled together into one SIP revision. However, we also recognize that certain changes will not impact the 15 percent reduction calculation, the control strategy, or the maintenance plan showing. We believe it is appropriate to create a "de minimis" exception to the public hearing requirement for minor changes. We also think it is appropriate for EPA to track these "de minimis" changes and record them. Such changes could then be handled through a letter notice or a direct final action. We define "de minimis" for such purposes to be those in which the 15 percent reduction calculation and associated control strategy, or the maintenance plan showing, do not change. We expect a State to aggregate all such "de minimis" changes together when making the determination as to whether the change needs to become a SIP revision. At the point when all such "de minimis" changes, aggregated together, impact the 15 percent reduction calculation or maintenance plan showing, then all changes need to be submitted as a SIP revision, along with any associated control strategy changes. When approving the initial emissions inventory into the SIP, the Region should also provide notice that "de minimis" changes temporarily will be made through letter notice. Headquarters will develop boilerplate language for insertion into these packages. At the time when an EPA Region believes that several "de minimis" changes together impact a control measure or other program, the State will then need to make the change through a formal SIP revision process, in conjunction with the change to the control measure or other SIP program.

We trust that this information will be of help to you as you guide your States through the SIP development process. If you have questions or comments, please contact Sheila Holman (919-541-0861) or David Misenheimer (919-541-5473).

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