Case Nos. 09-71383 & 09-71404

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ASSOCIATION OF IRRITATED RESIDENTS, et al.,
Petitioners,
v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,
Respondents.

AND

NATURAL RESOURCES DEFENSE COUNCIL, INC.,
Petitioner,
v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
Respondent.

Petitions for Review of Final Action of the United States Environmental Protection Agency

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BRIEF FOR RESPONDENTS

Of Counsel:

JEFFERSON L. WEHLING
U.S. EPA, Region IX
Office of Regional Counsel

JAN M. TIERNEY
U.S. EPA
Office of General Counsel

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment & Natural Resources Div.

AUSTIN D. SAYLOR
United States Department of Justice
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-1880

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GLOSSARY OF ACRONYMS

AQMP	Air Quality Management Plan
CAA	Clean Air Act
CARB	California Air Resources Board
EPA	United States Environmental Protection Agency
FIP	Federal Implementation Plan
MVEBs	Motor Vehicle Emissions Budgets
NAAQS	National Ambient Air Quality Standards
PER	Petitioners' Excerpts of Record
RER	Respondents' Excerpts of Record
SCAQMD	South Coast Air Quality Management District
SIP	State Implementation Plan
TCM	Transportation Control Measure
VOC	Volatile Organic Compounds
VMT	Vehicle Miles Traveled

STATEMENT OF JURISDICTION

Petitioners challenge a March 10, 2009, action by the United States Environmental Protection Agency ("EPA" or "Agency") approving in part and disapproving in part several revisions to the Los Angeles metropolitan area portion of California's state implementation plan for meeting air quality standards for ozone under the Clean Air Act ("CAA" or "Act").

This Court has jurisdiction over these consolidated petitions (with one exception noted below) pursuant to CAA section 307, 42 U.S.C. § 7607(b)(1), which provides for review, "in the United States Court of Appeals for the appropriate circuit," of EPA action under the CAA "which is locally or regionally applicable." Petitioners timely filed their petitions in the appropriate circuit. With the exception noted below, EPA does not contest Petitioners' standing to challenge EPA's rulemaking.

Petitioners lack standing to challenge EPA's March 10, 2009, action on the so-called "Pesticide Element"[1/] because the agency's action did not cause their alleged injuries, nor can their alleged injuries be redressed by a favorable ruling.

[1/]As discussed infra at 12, the "Pesticide Element" was a plan designed to reduce volatile organic compound ("VOC") emissions from agricultural and commercial structural pesticide applications, Petitioners' Excerpts of Record ("PER") 256, and was among several measures in the 1994 California Ozone Plan that EPA approved in 1997. RER 133.

The submitted Pesticide Element did not differ from that which was already included in the approved plan, and which would have continued in effect regardless of whether EPA chose to approve or disapprove the new submission. Thus, EPA's action could not have caused Petitioners' alleged injuries, nor could vacatur of EPA's approval remedy those alleged injuries. The Court lacks jurisdiction to hear these claims.

ISSUES PRESENTED FOR REVIEW

1. Whether EPA reasonably found that, because California already had an approved attainment demonstration for the 1-hour ozone standard, EPA's disapproval of the State's voluntarily-revised attainment demonstration did not trigger a duty to promulgate a Federal Implementation Plan or impose sanctions.

2. Whether Petitioners have standing to challenge EPA's approval of California's commitment to maintain the status quo with respect to the existing Pesticide Element, as approved by EPA in 1997, and if so, whether EPA was required to undertake a substantive review of the existing Pesticide Element.

3. Whether EPA reasonably interprets the Act to allow California to comply with the offset requirement of CAA section 182(d)(1)(A) by showing annual decreases in aggregate motor vehicle emissions through the attainment year.

STATEMENT OF THE CASE

A state implementation plan, or "SIP," documents a state's plan for implementing, maintaining, and enforcing federal air quality standards in each air quality control region within that state. SIPs, and revisions to them, must be reviewed and approved by EPA before they become effective. On March 10, 2009, EPA issued a final rule approving in part and disapproving in part proposed revisions to California's SIP. These revisions included a revised slate of measures to reduce emissions ("2003 State Strategy"), and a revised local ozone plan updating various elements of an earlier-approved plan ("2003 South Coast Air Quality Management Plan"). Both submissions included provisions specifically targeting the Los Angeles-South Coast Air Basin Area ("South Coast"),[2/] an "extreme nonattainment area" for the 1-hour ozone standard under the Act.

A SIP for an extreme 1-hour ozone nonattainment area must meet various requirements under the Act, including the requirement to demonstrate attainment by the applicable attainment date (i.e., 2010). More than eleven years ago, EPA determined that the 1994 California Ozone SIP met this attainment demonstration requirement for the 1-hour ozone standard for the South Coast. Respondents'

[2/]The"South Coast" area is comprised of Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. See 40 C.F.R. § 81.305.

Excerpts of Record ("RER") 097. In 2000, EPA approved revisions to that ozone attainment demonstration plan that the State chose, but was not required, to submit. RER 146–47. This fully-approved attainment demonstration remains in effect until EPA approves a SIP revision that modifies, replaces, or rescinds it. In 2004, California chose to submit revisions to the South Coast portion of the California Ozone SIP, including revisions to the attainment demonstration and the related control strategy for achieving the standard by 2010, and new motor vehicle emissions budgets to ensure continued federal funding for transportation projects. See PER 010–011. Following California's voluntary withdrawal of key measures upon which the revisions relied, EPA ultimately approved only certain portions of the submitted revisions and disapproved others. PER 001. Significantly, all the elements that EPA disapproved, such as the 1-hour ozone attainment demonstration, were discretionary revisions to previously-approved SIP elements, which thus remained in effect.

In their consolidated petitions for review, Petitioners challenge several aspects of EPA's action. First, they claim that, upon disapproving the revised attainment demonstration, EPA should have required California to submit a new plan demonstrating attainment of the 1-hour ozone standard. Second, Petitioners assert that EPA's approval of a particular state measure, the Pesticide Element,

was unlawful because it "lacks an enforceable commitment to adopt regulations," and that as a consequence "the Court should vacate EPA's approval of the 2003 State Strategy." Pet. Br. at 47. Finally, Petitioners claim that EPA acted contrary to section 182(d)(1)(A) of the Act by finding that, because California showed that aggregate motor vehicle emissions will decrease each year through the attainment year of 2010, California was not required to submit transportation control measures to offset growth in vehicle miles traveled.

STATEMENT OF FACTS

I. STATUTORY AND REGULATORY BACKGROUND

A. The Clean Air Act and National Ambient Air Quality Standards

The Clean Air Act, 42 U.S.C. §§ 7401–7671q, establishes a comprehensive program for controlling and improving the nation's air quality through both state and federal regulation. The Act requires EPA to establish National Ambient Air Quality Standards ("NAAQS") for air pollutants that it determines may reasonably be anticipated to endanger public health or welfare. 42 U.S.C. §§ 7408–09. One of the pollutants for which EPA has established NAAQS is ozone.[3/] The 1979 "1-

[3/]Ground-level ozone is not emitted directly into the air, but is formed through photochemical reactions in the atmosphere involving directly-emitted VOCs and oxides of nitrogen ("NO_x"). VOC and NO_x are often referred to as ozone precursor emissions.

hour" ozone standard set the acceptable level for ozone in the ambient air at 0.12 parts per million, averaged over intervals of one hour. RER 001.

Under the Act, States have the primary responsibility for ensuring that their ambient air meets the NAAQS. 42 U.S.C. § 7407(a). Each State's comprehensive approach for attaining the NAAQS is set forth in a SIP that provides for the implementation, maintenance and enforcement of the NAAQS in each "air quality control region" within that State. 42 U.S.C. § 7410(a). Every SIP or SIP revision must be adopted by the State after reasonable notice and hearing and must be submitted to EPA for approval. 42 U.S.C. § 7410(a)(1). The general requirements for SIPs are set forth in 42 U.S.C. § 7410(a)(2), and include enforceable emissions limitations and other control mechanisms to meet the requirements of the CAA, enforcement programs, and assurances of adequate personnel, funding and authority to carry out the SIP.

B. Nonattainment Areas

EPA initially designates various areas of the country as "attainment" or "nonattainment," depending on whether they met the NAAQS for a particular pollutant. 42 U.S.C. § 7407(d). In addition to the general requirements set forth in 42 U.S.C. § 7410(a)(2), SIPs for areas designated "nonattainment" for particular pollutants, such as ozone, must include provisions as set forth in 42 U.S.C. § 7502.

The Act also contains specific requirements for ozone nonattainment areas, which depend on the severity of the ozone problem in the area. 42 U.S.C. §§ 7511–11f. Soon after these provisions were added as part of the 1990 CAA Amendments, EPA published in the Federal Register a detailed guidance document, referred to as the "General Preamble," discussing how the Agency expected these new requirements would be implemented. See RER 045–046.

C. EPA Review of State Plans and Revisions

Under the Act, States have "the primary responsibility for formulating pollution control strategies." Union Elec. Co. v. EPA, 427 U.S. 246, 256 (1976); see 42 U.S.C. § 7407(a) (the Act gives States the "primary responsibility for assuring air quality" through SIPs). States are responsible for submitting their plans to EPA for review, and they must "specify the manner" in which their plans will achieve the NAAQS. 42 U.S.C. § 7407(a). SIPs need not be submitted as a whole, but may be submitted piece-by-piece. Hall v. EPA, 273 F.3d 1146, 1159 (9th Cir. 2001) ("The Act provides for piecemeal submission of SIP revisions, including attainment demonstrations"). Likewise, SIPs may be approved or disapproved piece-by-piece. 42 U.S.C. § 7410(k)(3).

EPA reviews the various SIP elements submitted by States at different times and for different purposes. See Hall v. EPA, 273 F.3d at 1159. The Act sets forth

specific time frames and procedures that apply to EPA's review and action on state submissions. 42 U.S.C. § 7410(k). Section 7410(k) authorizes EPA to: (1) fully approve the plan; (2) partially approve and partially disapprove the plan; or (3) conditionally approve the plan. Id. § 7410(k)(3)–(4). In addition, if a State fails to submit a plan required by the Act, EPA may issue a finding of failure to submit. Id. § 7509(a)(1). Once approved, SIPs become enforceable as federal law. Id. § 7413.

D. Sanctions and Federal Implementation Plans

EPA's finding that a State failed to submit a required plan, or its disapproval of a required plan, triggers a time period (known as the "sanctions clock") within which the State must either remedy the deficiency or face consequences such as emissions offsets or highway funding sanctions. 42 U.S.C. § 7509(a); id. § 7509(b) (describing sanctions). Specifically, if the State fails to make up for the deficiency within eighteen months, the emissions offset sanction applies, and six months later, highway funding sanctions apply. Id.; 40 C.F.R. § 52.31. The sanctions continue until EPA determines that the State has remedied the SIP deficiency.

Second, such a finding of failure to submit or disapproval also triggers a time period (known as the "FIP clock") by the end of which EPA must either

approve a plan submitted by the State that meets the applicable requirements or promulgate a Federal Implementation Plan ("FIP"). 42 U.S.C. § 7410(c)(1). EPA must promulgate the FIP within two years unless EPA approves a new plan submission for which the finding or disapproval was made. Id.

E. "SIP Calls"

Once EPA has fully approved a SIP as meeting the statutory requirements of the Act, the State has no further obligation under the Act to otherwise address those requirements. However, under CAA section 110(k)(5), 42 U.S.C. § 7410(k)(5), EPA may choose at any time to review an approved SIP. If, upon review, EPA determines that the approved SIP is "substantially inadequate" to, among other things, attain or maintain an air quality standard, then EPA "shall require the State to revise the plan as necessary to correct such inadequacies." This is known as a "SIP Call." Thus, if EPA exercises its discretion to review an approved SIP and finds it "substantially inadequate," EPA must require the State to correct the approved plan.

F. Transportation Conformity

In the 1990 CAA Amendments, Congress responded to the air pollution stemming from highway and transit projects by enacting revised "conformity" requirements with which transportation plans and programs that contain

transportation projects must comply. 42 U.S.C. § 7506(c). CAA section 176(c) integrates the Act's air quality planning process with the surface transportation planning process. Generally, under these requirements the federal government may not approve, accept or fund any transportation plan, program or project unless it conforms to the applicable SIP. Id. § 7506(c)(2).

EPA's implementing regulations establish detailed criteria for determining whether a transportation plan or project conforms to an applicable SIP. 40 C.F.R. §§ 93.108–93.115. Each control strategy SIP (including attainment demonstration SIPs) must identify the total allowable emissions consistent with meeting the applicable statutory requirement, and must allocate that total among the various types of sources. The specific allocation to highway and transit vehicle use and emissions is referred to as the motor vehicle emissions budget, or "MVEB." 40 C.F.R. § 93.101. Under EPA's regulations, transportation agencies rely on MVEBs, found adequate or approved by EPA, to make conformity determinations for transportation plans and programs.

To avoid unnecessary disruption in highway and transit projects during the period for EPA review of the submitted SIP, EPA regulations provide that EPA may make preliminary "adequacy" determinations regarding MVEBs set forth therein. See 40 C.F.R. § 93.118. EPA will determine "adequate" a budget

included in a submitted (but not yet approved) SIP if certain criteria set forth at 40 C.F.R. § 93.118(e)(4) are met. A budget that has been determined to be "adequate" must be used for conformity determinations. EPA's adequacy determination is based on a preliminary review of the SIP submittal, but after further review EPA may declare the MVEB to be inadequate. 40 C.F.R. § 93.118(e)(3). Further, even if EPA finds MVEBs to be adequate, the SIP submittal (and related MVEBs) could later be disapproved.

II. HISTORY OF OZONE REGULATION IN THE SOUTH COAST

A. The 1994 California Ozone SIP

Substantial amendments to the CAA in 1990 set new planning requirements and attainment deadlines for the NAAQS, including the 1-hour ozone standard. Among the new requirements was a mandate for certain nonattainment areas to submit SIP revisions demonstrating attainment of the ozone standard by the applicable attainment date. 42 U.S.C. § 7511a(c)(2)(A); id. § 7511a(e). An "attainment demonstration" includes both a control strategy and air quality modeling showing that the control strategy is sufficient to reduce emissions to levels where violations of the NAAQS would not occur by the attainment date.

Pursuant to the Act as amended in 1990, EPA classified the South Coast ozone nonattainment area as "extreme" for 1-hour ozone, with an attainment

deadline of November 15, 2010. See 56 Fed. Reg. 56,694, 56,726 (Nov. 6, 1991); 42 U.S.C. § 7511(a)(1). In response, the California Air Resources Board ("CARB") submitted a SIP revision on November 15, 1994 ("1994 California Ozone SIP") that included, among many other elements, the attainment demonstration for the South Coast "extreme" ozone nonattainment area. That attainment demonstration relied upon photochemical modeling and the local stationary source and transportation-related control strategy contained in the South Coast Air Quality Management District's ("SCAQMD's") 1994 South Coast Air Quality Management Plan ("AQMP"), and also upon a state control strategy focused on mobile sources, consumer products, and pesticide use.

In 1997, EPA took final action to approve various elements of the 1994 California Ozone SIP, including the ozone attainment demonstration for the South Coast and the state and local strategies upon which the demonstration relied. RER 130. The "Pesticide Element" was among the specific state measures approved by EPA. Id. at 133. The Pesticide Element was designed to reduce VOC emissions from agricultural and commercial structural pesticide applications. PER 256.

B. The 1997/1999 South Coast Ozone SIP

After EPA approved the 1994 California Ozone SIP, including the 1994 South Coast AQMP, CARB submitted a revised South Coast AQMP to EPA on

February 5, 1997. This 1997 South Coast AQMP was not federally required for ozone, but was submitted to modify the commitments as set forth in the 1994 South Coast AQMP. Specifically, the SCAQMD sought to abandon, relax, or postpone approximately 30 measures approved in the ozone SIP. See RER 137. The 1997 South Coast AQMP also included updated emissions inventories, updated growth projections, and a revised ozone attainment demonstration.

In 1999, EPA proposed approval of certain portions of the 1997 South Coast AQMP and disapproval of certain other portions. Specifically, EPA proposed disapproval of the changes to SCAQMD's commitments as set forth in the 1997 South Coast AQMP as an impermissible relaxation of previously approved control strategies. See id. at 140. EPA also proposed to disapprove the attainment demonstration in the 1997 South Coast AQMP, not because of deficiencies in the photochemical modeling analysis, but because of its reliance on the impermissibly relaxed SCAQMD control strategy. In its 1999 proposed rule, EPA addressed the consequences of a final disapproval of the control strategy and attainment demonstration in the 1997 South Coast AQMP: "As discussed above, the partial disapproval of the ozone SIP revision does not trigger mandatory sanctions under CAA section 179, since EPA's approval of the 1994 South Coast ozone plan with respect to the same requirements remains in force." Id. at 144.

Later that same year, the SCAQMD amended the ozone portion of the 1997 South Coast AQMP in response to EPA's proposed action.

In 2000, EPA took final action to approve the emissions inventories and ozone attainment demonstration in the 1997 South Coast AQMP, as amended in 1999. See RER 146–149. Upon this approval, the fully approved ozone attainment demonstration for the South Coast consisted of the photochemical modeling analysis from the 1997 South Coast AQMP, the SCAQMD control strategy from the 1999 amendment to the 1997 South Coast AQMP, the state control strategy from the 1994 California Ozone Plan, and certain transportation-related control measures and commitments from the 1994 South Coast AQMP. Taken together as such, the approved South Coast ozone attainment plan is referred to as the "1997/1999 South Coast Ozone SIP."

C. The 2003 State Strategy and the 2003 South Coast AQMP

On January 9, 2004, CARB submitted two SIP revisions. First, CARB submitted the "Final 2003 State and Federal Strategy for the California SIP" ("2003 State Strategy"), which identified CARB's regulatory agenda to reduce ozone in all areas of California by 2010. As originally submitted, the 2003 State Strategy was intended, in part, to update and entirely replace the state's strategy

(as set forth in the 1994 California Ozone SIP) for reducing ozone in the South Coast.

Second, CARB submitted the 2003 South Coast AQMP.[4] Like the 1997 South Coast AQMP, the 2003 South Coast AQMP was not a federally required plan for ozone. The 2003 AQMP was submitted in light of new photochemical modeling performed by the SCAQMD, purporting to show the need for additional emissions reductions, and to establish new motor vehicle emissions budgets and thereby avoid a transportation conformity lapse and associated federal funding losses. PER 112–13. The revised attainment demonstration in the 2003 South Coast AQMP relied upon additional SCAQMD control measures and commitments, and also relied upon the commitments by the state in the 2003 State Strategy. Later that year, EPA found the motor vehicle emissions budgets in the 2003 South Coast AQMP "adequate" for purposes of the Act's transportation conformity requirements, meaning they could be used for transportation planning

[4]In 2008, SCAQMD supplemented the 2003 AQMP with a demonstration showing aggregate motor vehicle emissions reductions each year from 2003 through 2010. PER 294.

purposes even though EPA had not yet made a final decision whether to approve or disapprove the two SIP revisions, see 40 C.F.R. § 93.118(e). See PER 310.[5/]

In 2008, prior to EPA action on the 2003 State Strategy, CARB withdrew many of the Strategy's key elements. PER 289–90. As a consequence, the only remaining elements of the plan were commitments by state agencies to pursue certain near-term defined control measures, and to continue implementation of the Pesticide Element from the 1994 California Ozone SIP. See PER 012. CARB also withdrew the transportation control measure element of the 2003 South Coast AQMP. PER 296.

On October 24, 2008, EPA proposed to approve what remained of the 2003 State Strategy and to approve in part, and to disapprove in part, the 2003 South Coast AQMP. PER 008. With respect to the 2003 State Strategy, EPA explained: "We propose to approve the State's commitments with respect to the near-term defined measures, not as fulfilling any particular requirement under the CAA, but as strengthening of the South Coast portion of the California SIP." PER 014. A specific control strategy, identified by the State as "PEST-1," was among those commitments proposed for approval by EPA. PEST-1 simply calls for continued

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[5/]Since that preliminary adequacy determination, these 1-hour ozone budgets have been superceded by 8-hour ozone budgets that EPA has found adequate. See RER 229, as corrected in RER 232.

implementation of the Pesticide Element approved by EPA in 1997. In the proposed rule, EPA explained its proposed approval of PEST-1 as follows: "We interpret our approval of this measure as maintaining the status quo with respect to the existing pesticide strategy (i.e., the SIP will continue to reflect the strategy as approved by EPA in 1997)." PER 013, n.1.

With respect to the 2003 South Coast AQMP, EPA proposed to approve the SCAQMD's control strategy as SIP-strengthening, but proposed to disapprove the attainment demonstration because of its reliance on various state commitments originally included in the 2003 State Strategy but later withdrawn by CARB. PER 014–015. EPA proposed to disapprove the VOC and NO_x motor vehicle emissions budgets for ozone that it had previously found adequate because, given the withdrawal by CARB of state commitments upon which the budgets were based, "the plan revision as a whole does not provide for [reasonable further progress] and attainment." PER 018.

EPA also proposed to approve the State's demonstration that no transportation control measures to offset growth in emissions from growth in vehicle miles traveled or growth in the number of vehicle trips are required under 42 U.S.C. § 7511a(d)(1)(A). EPA's proposed approval was based on the State's demonstration that there will be no such growth in emissions, and instead that

aggregate vehicle emissions will decline each year from the base year of the plan through the attainment year of 2010. Id.

EPA explained the consequences of its proposed partial disapproval: "No sanctions clocks or FIP requirement would be triggered by our disapprovals, if finalized, because the approved SIP already contains the plan elements that we are proposing to disapprove. A disapproval of the revisions to the already-approved elements would not alter the fact that the SIP already meets these statutory requirements." PER 019. On March 10, 2009, after consideration of public comments on the proposed rule, EPA finalized action on the 2003 State Strategy and 2003 South Coast AQMP as proposed. PER 001.

STANDARD OF REVIEW

A challenge to EPA action under section 307(b) of the CAA, 42 U.S.C. § 7607(b), is reviewed under the well-established "arbitrary and capricious" standard of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A).[6] See Alaska Dep't of Envt'l Conservation v. EPA, 540 U.S. 461, 496–97 (2004); Vigil v. Leavitt, 381 F.3d 826, 833 (9th Cir. 2004). This standard "is narrow and a

[6]Section 307(d) of the CAA, 42 U.S.C. § 7607(d), which specifies detailed procedures that EPA must follow for certain rulemakings, does not apply here because the rulemaking at issue was not one listed in 42 U.S.C. § 7607(d)(1)(A)–(V).

court is not to substitute its judgment for that of the agency." Motor Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983). Indeed, an agency's determinations must be upheld if they "conform 'to certain minimum standards of rationality.'" Small Refiner Lead Phase-Down Task Force v. EPA, 705 F.2d 506, 521 (D.C. Cir. 1983) (citation omitted).

An agency action is arbitrary and capricious only "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem," offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. Motor Vehicle Mfrs. Ass'n, 463 U.S. at 43. A reviewing court may not set aside agency action merely because the court would have decided the issue differently, so long as the agency has considered the relevant factors and offered a rational explanation for its action. Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971).

Questions of statutory interpretation are governed by the two-step test set forth in Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837, 842–43 (1984). Under the first step, the reviewing court must determine "whether Congress has directly spoken to the precise question at issue." Id. at 842. If congressional intent is clear

from the statutory language, the inquiry ends. Id. at 842–43. If the statute is silent or ambiguous on the particular issue, the Court must accept the agency's interpretation if it is reasonable; the agency's interpretation need not represent the only permissible reading of the statute nor the reading that the Court might originally have given it. Id. at 843 & n.11; Chemical Mfrs. Ass'n v. NRDC, 470 U.S. 116, 125 (1985); see also Leslie Salt Co. v. United States, 55 F.3d 1388, 1394 (9th Cir. 1995).

SUMMARY OF ARGUMENT

The Court should deny the petitions because EPA's actions were reasonable and consistent with the Clean Air Act.

First, upon disapproving the 2003 South Coast AQMP's 1-hour ozone attainment demonstration, EPA was not obliged to require a new attainment demonstration, to start sanctions clocks, or to develop a FIP. The Act provides a specific process, a "SIP call," by which EPA may mandate revisions to approved SIPs. The SIP call process is initiated when EPA exercises its discretion to review an existing, approved SIP. At issue here is EPA's review of a new submission from the State, and EPA's review of that submission did not entail a review of the adequacy of the existing SIP. Thus, because EPA's review of the new submission did not involve review of the adequacy of the existing SIP, there was no basis for

issuing a SIP call, which is the sole means for requiring a State to submit a new SIP for an obligation that it has already fulfilled. Petitioners cannot compel a SIP call under any circumstances, particularly where, as here, the existing SIP was not under review. Because EPA has already approved the ozone attainment demonstration for the South Coast (i.e., the 1997/1999 South Coast Ozone SIP), California has met the applicable requirement in section 182(c)(2)(A) of the CAA, 42 U.S.C. § 7511a(c)(2)(A). Only a determination by EPA under CAA section 110(k)(5), 42 U.S.C. § 7410(k)(5), that the approved SIP is "substantially inadequate" – a finding that has not been made – could trigger an obligation for the state to submit a new 1-hour ozone attainment demonstration. Because the CAA does not require States to periodically revise their attainment demonstrations even where the State decides that a revision is warranted, EPA's disapproval of the State's discretionary submission of a new attainment demonstration did not trigger any requirement to impose sanctions or promulgate a FIP.

Second, Petitioners lack standing to challenge EPA's approval of PEST-1, a specific strategy included in the 2003 State Strategy. EPA's action with respect to PEST-1 in the 2009 rulemaking did not cause, nor could a favorable ruling by this Court redress, Petitioners' alleged injuries because PEST-1 did not modify the existing Pesticide Element in the approved SIP. Because the Pesticide Element

was already part of the approved SIP that the State was required to implement, it would have remained in effect whether EPA approved or disapproved the State's 2003 commitment to continue implementing that program.

Finally, EPA reasonably interpreted section 182(d)(1)(A) of the CAA, 42 U.S.C. § 7511a(d)(1)(A), which requires States only to adopt transportation control measures ("TCMs") to "offset any growth in emissions" from growth in vehicle miles traveled or numbers of vehicle trips; it does not require California to submit such offsetting TCMs where the State demonstrates, as California did here, that aggregate motor vehicle emissions will decrease each year through the attainment year.

ARGUMENT

I. EPA HAS ALREADY APPROVED CALIFORNIA'S PLAN FOR ATTAINMENT OF THE 1-HOUR OZONE STANDARD, AND HAS NO PRESENT DUTY TO REQUIRE A NEW ATTAINMENT DEMONSTRATION

The Clean Air Act requires that SIPs provide for attainment of the NAAQS. 42 U.S.C. § 7410(a)(2)(A). In 1990, Congress amended the CAA to require States to submit to EPA, in the form of a SIP revision, "[a] demonstration that the [SIP], as revised, will provide for attainment of the ozone [NAAQS] by the applicable attainment date." Id. § 7511a(c)(2)(A). To comply with this mandate, California

submitted a SIP revision in 1994 that included an attainment demonstration for the South Coast for the 1-hour ozone NAAQS. EPA approved that attainment demonstration in 1997, RER 097, upon finding that it provided for attainment of the 1-hour ozone NAAQS by 2010.[7/] California later chose to amend portions of the previously-approved ozone attainment demonstration, and EPA approved that revised demonstration in 2000. RER 146.

In 2003, California again chose to amend its 1-hour ozone attainment demonstration for the South Coast. In the March 10, 2009, rulemaking at issue in these petitions, EPA disapproved this new attainment demonstration because control measures in the 2003 State Strategy upon which that demonstration relied had been withdrawn by the State in early 2008. Absent these control measures, EPA determined that the newest attainment demonstration could not meet the requirements of CAA section 182(c)(2)(A), 42 U.S.C. § 7511a(c)(2)(A). However, EPA explained that because the already-approved attainment demonstrations remained in effect, disapproval of the 2003 attainment demonstration did not trigger a requirement to promulgate a FIP or to impose sanctions.

[7/]For "extreme" 1-hour ozone nonattainment areas such as the South Coast, CAA section 181(a) sets November 15, 2010 as the outside deadline for attainment of the 1-hour ozone NAAQS.

Petitioners contend that the attainment demonstration in the 2003 South Coast AQMP was "not discretionary," Pet. Br. at 36, and that upon disapproving the 2003 AQMP's attainment demonstration EPA should have required California to submit a new attainment demonstration. Petitioners argue that EPA had a duty to require a new attainment demonstration in light of "new information" indicating that the previously-approved attainment demonstration was "ineffective" and "patently out of date." Pet. Br. at 35–36. These arguments must fail, because the attainment demonstration in the 2003 South Coast AQMP was not required under the CAA, and the State's submittal of a new plan does not trigger an obligation for EPA to review the existing approved SIP. Rather, EPA's obligation with respect to a SIP revision is limited to reviewing that submittal for compliance with the CAA.[8/] Only upon finding that an approved SIP is "substantially inadequate"

[8/]The provision governing EPA review of SIP revisions is 42 U.S.C. § 7410(*l*). This section bars EPA from approving a SIP revision if the "revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement" of the Act. This places no burden on EPA to perform a review of the approved SIP to determine its adequacy; rather, EPA's obligation is to review the SIP, as the State wishes to revise it, to determine whether the revised plan will interfere with attainment or another applicable requirement. See generally, Hall v. EPA, 273 F.3d at 1159 (vacating and remanding EPA's approval of a SIP revision because EPA failed to explain why the revision did not interfere with CAA requirements enacted since the program had previously been revised). Here, the submitted revision included a wholesale replacement of the 1-hour ozone attainment demonstration in the

(continued...)

under 42 U.S.C. § 7410(k)(5) would EPA have authority to require a State to revise an approved SIP. The rulemaking at issue in this case did not involve any such finding or review. EPA has no current obligation to require the State to submit a new attainment demonstration.

A. Nothing in the CAA Required California to Submit a New 1-Hour Ozone Attainment Demonstration in 2003, Nor is EPA Obliged to Require One Now

California's SIP has a federally-approved 1-hour ozone attainment demonstration for the South Coast: the 1997/1999 South Coast Ozone SIP, which replaced part of the earlier-approved attainment demonstration from the 1994 South Coast AQMP. This approved demonstration remains in effect unless and until EPA approves a SIP revision (or promulgates a FIP) that modifies, replaces, or rescinds it. See General Motors Corp. v. United States, 496 U.S. 530, 541 (1990) (the "approved SIP is the applicable implementation plan during the time a SIP revision proposal is pending"); Safe Air for Everyone v. EPA, 488 F.3d 1088, 1097 (9th Cir. 2007) (a SIP approved by EPA cannot be changed "unless and until

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[8/](...continued)
existing SIP, and EPA met section 110(*l*) by disapproving the plan because the state withdrew much of the state strategy intended to provide the emissions reductions that it believed to be necessary based on the updated photochemical modeling analysis. Thus, the submitted attainment demonstration did not meet the "applicable requirement" of demonstrating attainment of the 1-hour ozone standard.

EPA approve[s] any change") (emphasis added). Petitioners' desire for an updated plan cannot upset this statutory regime.

1. Absent a finding by EPA that California's SIP is "substantially inadequate" to attain the NAAQS or otherwise comply with the Act, EPA cannot require the State to submit a new attainment demonstration.

EPA is required to mandate SIP revisions only after it exercises its discretion to review an approved SIP and finds that the approved SIP is "substantially inadequate to attain or maintain the [NAAQS] . . . or to otherwise comply with any requirement of [the CAA]." 42 U.S.C. § 7410(k)(5). This action by EPA, a "SIP call," is "[t]he proper EPA response to implementation failures (i.e. failures to attain the NAAQS)." State of Arizona v. Thomas, 829 F.2d 834, 836 (9th Cir. 1987). A SIP call is the sole means specified in the CAA by which EPA can command a State to revise an approved SIP. See 42 U.S.C. § 7410(k)(5) (outlining the "SIP call" procedure); Clean Air Implementation Project v. EPA, 150 F.3d 1200, 1207 (D.C. Cir. 1998) (explaining that requiring States to change their SIPs "can only occur through an independent procedure known as a 'SIP call'").

A SIP call is an "extensive regulatory process," under which EPA requires a State to revise its SIP and the public is given a chance to comment. Clean Air

Implementation, 150 F.3d at 1207; see 42 U.S.C. § 7502(d) (revisions required in nonattainment areas in response to EPA finding under section 110(k)(5)). EPA has not invoked this process for the South Coast 1-hour ozone attainment demonstration in the 1997/1999 South Coast Ozone SIP, nor may Petitioners compel it. Whether the EPA Administrator should choose to review a SIP and make a finding of "substantial inadequacy," which would mandate an EPA call for corrective SIP revisions, is wholly within the Administrator's discretion. See 42 U.S.C. § 7410(k)(5) (specifying that EPA may issue a SIP call "[w]henever the Administrator finds that the applicable [SIP] . . . is substantially inadequate . . .") (emphasis added); cf. Sierra Club v. Johnson, 541 F.3d 1257, 1265 (11th Cir. 2008) (construing 42 U.S.C. § 7661d(b)(2) ("The Administrator shall issue an objection [to a Title V permit]. . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of [the Clean Air Act] . . ."), to allow EPA discretion to determine what such a citizen petition must show in order to make an adequate "demonstration"); Citizens Against Ruining the Env't v. EPA, 535 F.3d 670, 677 (7th Cir. 2008) (same).

Ignoring the "SIP call" process entirely, Petitioners contend that EPA should have required a new attainment demonstration because Petitioners believe the "assumptions underlying the 1997/1999 Plan are no longer valid," and that "as

a result of . . . new information, we know that the old 1997/1999 Plan is not going to work as envisioned." Pet. Br. at 36. In support of these assertions, Petitioners point to "updated demographic data, new air quality data, and information on estimating motor vehicle emissions." Pet. Br. at 35. However, Petitioners' arguments that the 1997/1999 South Coast Ozone SIP is now "outdated" and "ineffective" are not equal to an EPA finding that the SIP is "substantially inadequate." A SIP is a complex, multi-faceted set of obligations. See 42 U.S.C. § 7410(a)(2) (setting forth basic SIP elements for all SIPs); id. § 7502 (setting forth additional requirements for nonattainment areas); id. § 7511a (setting forth additional prescribed elements for ozone nonattainment areas based on the area's classification). The existence of new, updated, or different information does not mean that the SIP is "substantially inadequate" for one or more of the purposes identified under CAA section 110(k)(5). Such a determination can only be made by EPA after EPA exercises its discretion to review the existing, approved SIP as a whole. Petitioners point to nothing in the CAA directing EPA to perform a review of the approved SIP or to otherwise require a new attainment demonstration "in light of significant new information," Pet. Br. at 35. Nor do Petitioners explain how the Agency could lawfully do so without first exercising its discretion to

review the approved SIP, as a whole, and making a threshold determination under CAA section 110(k)(5) that the SIP is "substantially inadequate."

Absent action by EPA to initiate review of the approved SIP, which might lead to a "SIP call," California's approved attainment demonstration remains valid. Petitioners' claims seeking EPA to require a new attainment demonstration must be denied.

2. The Act's transportation conformity provisions do not compel EPA to require a new attainment demonstration.

In their brief, Petitioners raise for the first time a novel theory in support of their contention that a new 1-hour ozone attainment demonstration is required for the South Coast. See Pet. Br. 36–39. In the wake of the California's withdrawal of key portions of the 2003 State Strategy upon which the attainment demonstration in the 2003 South Coast AQMP relied, EPA disapproved that discretionary submittal's 1-hour ozone attainment demonstration (and related MVEBs). See PER 006. Petitioners appear to argue that EPA should have required a new attainment demonstration because: the State chose to submit new MVEBs to avoid a lapse in federal funding for transportation projects, EPA made an initial determination in 2004 that those MVEBs were "adequate," and

transportation agencies subsequently relied on the MVEBs to approve transportation plans and related highway and transit projects. Pet. Br. 38–39.

First, Petitioners waived this argument by failing to raise it during the public comment period on EPA's October 24, 2008, proposed action, and the Court should decline to hear it. Havasupai Tribe v. Robertson, 943 F.2d 32, 34 (9th Cir. 1991) ("[a]bsent exceptional circumstances," issues not raised during the public comment period "may not form a basis for reversal of an agency decision"). The sole comments addressing MVEBs challenged EPA's contention that transportation conformity determinations are no longer required for the 1-hour ozone standard because EPA has revoked the 1-hour ozone standard and because EPA has found 8-hour ozone MVEBs for the South Coast to be "adequate" for transportation conformity purposes. PER 096–097.

However, even were this argument properly before the Court, Petitioners have failed to identify any provision in the Act's conformity provisions or EPA's regulations that compels EPA to require the State to submit a new attainment demonstration where MVEBs associated with a SIP were found "adequate" and used for a period time, but ultimately disapproved. At best (though they do not cite the CAA's "SIP call" provision), Petitioners' argument appears to be that EPA's ultimate disapproval of these budgets after a period of reliance by

transportation agencies, renders the approved SIP "inadequate" within the meaning of section 110(k)(5), and thus EPA is now obligated to "call" the SIP. However, as explained above, only when EPA exercises its discretion to review the whole SIP and finds it "substantially inadequate" does the obligation to "call" the SIP trigger. While the use for a period of time of budgets that were ultimately disapproved might be a relevant factor in any such review, it is only one factor.[9/] As explained above, discretion lies with EPA to undertake such review, and EPA has not chosen to do so. Since EPA has not made a finding that the approved SIP is "substantially inadequate" within the meaning of CAA section 110(k)(5), there is no basis to require the State to submit a new attainment demonstration SIP.

[9/]In the preamble to a 2004 final rule on transportation conformity, EPA explained that conformity determinations made during a period in which the budget was determined to be adequate would remain valid even if the SIP and associated budget were subsequently disapproved. RER 191-192. EPA further explained that the "iterative nature" of the conformity process (i.e., recurring conformity demonstrations) will ensure that transportation planning is consistent with the SIP's goals for attaining and maintaining the NAAQS. This is because these new determinations would need to be made consistent with any new budgets (which would account for past planning activities), or with the interim emissions test established in EPA's regulations where no budgets are available (as a result of subsequent disapproval). Id. at 191. Thus, it would be incorrect to assume that use of a budget that is ultimately disapproved necessarily renders the currently-approved SIP "substantially inadequate" within the meaning of 42 U.S.C. § 7410(k)(5).

The Act's transportation conformity provisions aim to ensure that federal funding and approval go only to those transportation projects that are consistent with the statute's goals. See 42 U.S.C. § 7506(c)(1), (2). That California chose to submit new MVEBs because it desired "to avoid a transportation conformity lapse and associated federal funding losses," PER 113, is irrelevant to whether EPA has an obligation under the CAA to require a new attainment demonstration. Nor does it follow that because EPA made a preliminary determination in 2004 that the MVEBs in the 2003 South Coast AQMP were "adequate" (i.e., "provid[ed] for progress and attainment of the 1-hour ozone . . . NAAQS," PER 310), and because transportation agencies subsequently relied on these MVEBs in approving various highway and transportation projects, that EPA was obliged, upon ultimately disapproving the MVEBs, to require California to submit a new 1-hour ozone attainment demonstration.

None of these things – not California's choice to submit these MVEBs, not EPA's initial "adequacy" determination, and not subsequent use of these MVEBs by transportation agencies – changed the State's discretionary 2003 1-hour ozone attainment demonstration into a "required" submittal. The CAA "requirement" is to provide a 1-hour ozone attainment plan, 42 U.S.C. § 7511a(c)(2)(A), and EPA had already found that the attainment demonstration in the 1994 South Coast

AQMP (as later revised through approval of the 1997/1999 South Coast Ozone SIP) fully satisfied that requirement.

B. EPA's Disapproval of the 2003 Plan's 1-Hour Ozone Attainment Demonstration Did Not Trigger a Duty for EPA to Promulgate a FIP or to Impose Sanctions

Petitioners argue that EPA must promulgate a FIP because it disapproved the 2003 South Coast AQMP's 1-hour ozone attainment demonstration. Pet. Br. at 33. This is not correct. The 2003 South Coast AQMP's 1-hour ozone attainment demonstration was a discretionary revision to the previously-approved, still-in-effect attainment demonstration in California's SIP. Because California already had a full-approved 1-hour ozone attainment demonstration SIP as required under the Act, EPA's disapproval of the 2003 Plan's attainment demonstration did not trigger an obligation to promulgate an attainment demonstration FIP under CAA section 110(c)(1)(B), 42 U.S.C. § 7410(c)(1)(B), or to impose sanctions under CAA section 179(a), 42 U.S.C. § 7509(a). EPA has consistently interpreted the Act not to require EPA to promulgate a FIP or to impose sanctions upon disapproving a discretionary SIP revision such as the 1-hour ozone attainment demonstration in the 2003 South Coast AQMP.

EPA's statutory obligation to promulgate FIPs is only triggered when: 1) EPA "finds that a State has failed to make a required submission . . . ," emphasis

added, or 2) EPA "disapproves a State implementation plan submission in whole or in part." 42 U.S.C. § 7410(c)(1)(A)–(B). Similarly, mandatory sanctions apply only with respect to "any implementation plan or plan revision required under [Part D of Title I of the Act]." 42 U.S.C. § 7509(a) (emphasis added).

FIP and sanctions obligations are thus triggered only when a State fails to meet a statutory SIP requirement, and here California had met the applicable requirements – EPA's disapproval of California's discretionary SIP revisions did not alter that status. As explained above, EPA fully approved the South Coast's 1-hour ozone attainment demonstration on January 8, 1997, and subsequently fully approved discretionary revisions to this plan on April 10, 2000. California was under no further statutory or regulatory obligation to submit revisions to this fully approved plan. Thus, the new attainment demonstration at issue in this case was submitted at California's discretion, and was not "required" within the meaning of 42 U.S.C. §§ 7410(c)(1)(A) (FIP) or 7509(a) (sanctions).

Petitioners also invoke 42 U.S.C. § 7410(c)(1)(B), which specifies that EPA must promulgate a FIP within 2 years when it "disapproves a [SIP] submission in whole or in part." Pet. Br. at 34. Although this provision does not on its face refer only to "required" SIP submissions, EPA views this limitation as implicit in that the required submission referred to in 42 U.S.C. § 7410(c)(1)(A) in connection

with State failures to submit is the same type of submission referred to in 42 U.S.C. § 7410(c)(1)(B) in connection with disapprovals. Read "in . . . context and with a view to [its] place in the overall statutory scheme," Nat'l Ass'n of Homebuilders v. Defenders of Wildlife, 551 U.S. 644, 666 (2007), the provision requires EPA to promulgate a FIP within two years only after disapproving a required SIP revision. Using traditional tools of statutory construction, to read the provision to apply where EPA disapproves a discretionary SIP revision would yield absurd results, because it would require the agency to promulgate a FIP where the State's fully approved SIP remains in effect. See Bechtel Const., Inc. v. United Bhd. of Carpenters & Joiners of Am., 812 F.2d 1220, 1225 (9th Cir. 1987) ("Legislative enactments should never be construed as establishing statutory schemes that are illogical, unjust, or capricious"). This would upset the Act's scheme of cooperative federalism, which accords States primary responsibility in controlling air pollution within their borders, 42 U.S.C. § 7401(a)(3). The provision plainly applies only to EPA disapprovals of required SIP submittals.

Even if it were ambiguous, EPA's interpretation of this provision as applicable only to required submittals is reasonable and should be accorded deference under Chevron. Also entitled to deference (assuming for the sake of argument that the provisions are not unambiguous on the matter, as described

above) is EPA's interpretation of CAA sections 110(c)(1)(A) and 179(a) as inapplicable where EPA disapproves a SIP revision that was not "required" within the meaning of those provisions. To determine whether EPA's interpretation is permissible, the Court should "look to the plain and sensible meaning of the statute, the statutory provision in the context of the whole statute and case law, and to the legislative purpose and intent." Cuevas-Gaspar v. Gonzales, 430 F.3d 1013, 1022 (9th Cir. 2005).

As noted above, EPA's interpretation is consistent with the purposes behind the FIP and sanctions provisions. Under Title I of the Act, States have primary responsibility for implementing the NAAQS and EPA may step in only once it has determined that a State has failed to fulfill its responsibilities. 42 U.S.C. § 7401(a)(3). The mandatory sanctions provision was created to provide an incentive for States to take primary responsibility for implementing the NAAQS within their boundaries. See Natural Res. Def. Council, Inc. v. Browner, 57 F.3d 1122, 1123–24 (D.C. Cir. 1995) ("Congress established a number of incentives for states to comply with SIP submission and implementation deadlines . . . includ[ing] mandatory sanctions, discretionary sanctions, and imposition of a [FIP]."). Similarly, the FIP provision was created to ensure that where the States fail to take such responsibility, EPA will step into the State's shoes and ensure that

the statutory obligation is met. Id. Thus, once a State has met its statutory obligation, as has California with respect to the 1-hour ozone attainment demonstration for the South Coast, there is no basis for the imposition of sanctions or the promulgation of a FIP. EPA's interpretation gives full effect to the Act's approach of vesting States with the "primary responsibility" for attaining the NAAQS, 42 U.S.C. § 7407(a).

Furthermore, EPA's interpretation is reasonable because it makes no sense to interpret the FIP and sanctions provisions to be triggered in a situation, such as that in the South Coast, where EPA disapproves discretionary revisions to the State's fully-approved SIP. States are free to request modifications to their approved SIPs, and such modifications may be more, less, or equally as stringent as the requirements in the approved plan. For example, a State may choose to revise a technology-based requirement for a source category to make it less stringent than a requirement that was previously approved under 42 U.S.C. § 7511a(b)(2), which requires "reasonably available control technology" for certain sources. If EPA were to disapprove such submission, it would make no sense to interpret the Act to require EPA to promulgate a FIP in place of the disapproved submission when the SIP already contains an approved technology-based requirement for that source category. The purpose of a FIP is to establish a

federal plan when a State has not met its obligation to develop an approvable plan; its purpose is not to supercede existing approved State plans. See McCarthy v. Thomas, 27 F.3d 1363, 1365 (9th Cir. 1994) ("A FIP is a set of enforceable federal regulations that stand in the place of deficient portions of a SIP.") (emphasis added).

EPA has consistently maintained, as a matter of national policy, that when it disapproves discretionary SIP revisions, no sanctions or FIP requirements are triggered. See, e.g., 58 Fed. Reg. 50,262, 50,265 (Sept. 27, 1993) (Alabama); 65 Fed. Reg. 10,713, 10,716 (Feb. 29, 2000) (California); 73 Fed. Reg. 20,536, 20,547 (Apr. 16, 2008) (Nevada). EPA's longstanding, consistently-applied interpretation of the FIP and sanctions provisions as inapplicable to disapprovals of discretionary SIP revisions is reasonable, and entitled to deference under Chevron. See Good Samaritan Hosp. v. Shalala, 508 U.S. 402, 417 (1993) (explaining that "the consistency of an agency's position is a factor in assessing the weight that position is due"); Natural Res. Def. Council v. EPA, 526 F.3d 591, 602 (9th Cir. 2008) (same). Therefore, the Court should uphold EPA's determination that its disapproval of the voluntary 1-hour ozone attainment demonstration in the 2003 South Coast AQMP did not trigger FIP or sanctions clocks.

II. THIS COURT LACKS JURISDICTION TO HEAR PETITIONERS' "PESTICIDE ELEMENT" CLAIMS

Petitioners lack standing to challenge EPA's action approving PEST-1, the 2003 State Strategy's commitment to continue to implement the existing strategy to reduce VOC emissions from agricultural and structural pesticides in the South Coast and other areas. EPA first approved this strategy, the so-called "Pesticide Element," in 1997. RER 117. Whether EPA had approved or disapproved PEST-1, it would have remained in effect. Petitioners' alleged injuries stemming from the Pesticide Element were not caused by EPA's 2009 rulemaking, and cannot be redressed by the relief they seek.

A. Petitioners Lack Standing to Challenge EPA's 2009 Approval of PEST-1, the 2003 State Strategy's Commitment to Maintain the Status Quo With Respect to the Existing Pesticide Element

"Article III of the Constitution confines the federal courts to adjudicating actual 'cases' and 'controversies.'" Allen v. Wright, 468 U.S. 737, 750 (1984); Warth v. Seldin, 422 U.S. 490, 498 (1975). "Federal courts are presumed to lack jurisdiction, unless the contrary appears affirmatively from the record." Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 1993) (citation and internal quotation marks omitted). As the parties invoking federal jurisdiction, Petitioners bear the burden of demonstrating that they possess standing to seek the requested relief. See

Summers v. Earth Island Inst., 129 S. Ct. 1142, 1149 (2009); Northwest Envt'l Defense Ctr. v. BPA, 117 F.3d 1520, 1528 (9th Cir. 1997).

To pursue their claims, Petitioners must demonstrate the three elements that constitute the "irreducible constitutional minimum" of Article III standing. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). In Lujan, the Supreme Court reiterated that a plaintiff must have suffered an "injury in fact" that is actual, imminent and not conjectural or hypothetical, that was caused by the conduct complained of, and that is likely to be redressed by a favorable decision. Id. at 560–61. Petitioners must demonstrate standing separately for each claim, and for each form of relief sought. DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 352 (2006).

1. Petitioners' alleged injuries were not caused by EPA's 2009 approval of PEST-1, the 2003 State Strategy's commitment to maintain the status quo with respect to the existing Pesticide Element.

To satisfy the traceability requirement of constitutional standing, Petitioners must show there is a "causal connection between the injury and the conduct complained of – the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant.'" Lujan, 504 U.S. at 560 (alteration and ellipses in original)

(quoting Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41–42 (1976)). Petitioners have failed to meet this burden.

As relevant to their Pesticide Element claims, Petitioners allege that they and their members are injured by "excess emissions allowed from [EPA's] failure to control pesticides, emissions that would not otherwise occur," Pet. Br. at 29, and by "weakened enforcement opportunities for failures to comply with the EPA-approved SIP measures," id. at 30. Petitioners also assert that they are injured by "EPA's approval of unenforceable commitments in the State Strategy, which could preclude Petitioners from seeking redress if these measures are not implemented." Id. As explained below, there is simply no causal link between any of these alleged injuries and EPA's 2009 action maintaining the status quo with respect to the existing Pesticide Element, for that element would have remained in effect regardless of whether EPA approved or disapproved PEST-1.

The limited language in the 2003 State Strategy concerning PEST-1 indicates that it is simply a continuation of the Pesticide Element as approved in 1997: "As described in the 1994 SIP and U.S. EPA's notice approving that plan, [the California Department of Pesticide Regulation] committed to reduce VOC emissions from pesticides through voluntary measures, with a regulatory backstop." PER 256. As EPA stated in its proposed rulemaking and in response

to comments, "We interpret our approval of this measure as maintaining the status quo with respect to the existing pesticide strategy (i.e., the SIP will continue to reflect the strategy as approved by EPA in 1997)." PER 006.

CARB, the designee for SIP matters in California, did not submit comments in response to EPA's proposed rule on the 2003 State Strategy, and thus did not object to EPA's interpretation that approval of PEST-1 maintained the status quo. Likewise, neither during public comments nor in their opening brief did Petitioners challenge this interpretation. Nor did they challenge EPA's assertion that either approval or disapproval would have resulted in the same regulatory outcome, i.e., continuation of the existing Pesticide Element as approved by EPA in 1997.

Petitioners' sole claim appears to be that the description of the Pesticide Element in PEST-1 is faulty given the outcome of this Court's decision in El Comité para el Bienestar de Earlimart v. Warmerdam, 539 F.3d 1062 (9th Cir. 2008), and that the Pesticide Element, as approved into the SIP in 1997, is unenforceable. They therefore assert that EPA's approval of PEST-1 violates the Act and that the Court should "vacate EPA's approval of the 2003 State Strategy." Pet. Br. 47. However, EPA's recent approval of PEST-1 did not make the Pesticide Element either more, or less, enforceable than it already was. The

Pesticide Element would have continued in effect regardless of what action EPA took. Thus, even if Petitioners' alleged harm is fairly traceable to EPA's approval of the Pesticide Element in 1997, it is not fairly traceable to EPA's approval of PEST-1 in 2009.

In support of their assertion that their injuries are traceable to EPA's actions with respect to PEST-1, Petitioners attempt to compare this case with Biodiversity Legal Found. v. Badgley, 309 F.3d 1166 (9th Cir. 2002). Pet. Br. 29. In that case, an environmental organization was injured by the U.S. Fish & Wildlife Service's failure to comply with certain deadlines under the Endangered Species Act, which failure "result[ed] in continued threats to [threatened species'] existence." Badgley, 309 F.3d at 1172. Unlike the situation in Badgley, where affirmative action by the U.S. Fish & Wildlife Service would have resulted in the species being listed as plaintiffs desired, here the existing Pesticide Element would have remained in effect whether EPA approved or disapproved PEST-1. Petitioners' alleged injuries are thus not fairly traceable to EPA's recent action.

2. Vacatur and remand of EPA's approval of PEST-1 would not redress Petitioners' alleged injuries.

Petitioners also cannot satisfy the requirement that a favorable judicial decision would "likely" redress their alleged injury. See Lujan, 504 U.S. at 561.

The redressability analysis requires a court to examine whether it "has the power to right or prevent the claimed injury." Gonzales v. Gorsuch, 688 F.2d 1263, 1267 (9th Cir. 1982). Even if this Court were to grant the relief Petitioners' seek, vacatur and remand of EPA's approval of PEST-1 (see Pet. Br. at 3, 21, 47, and 60), this would not redress their alleged injuries because the existing Pesticide Element as approved in 1997 would remain in effect as a SIP-approved commitment. Any injuries stemming from that previously-approved element would continue to occur. See Railway Labor Executives Ass'n v. Dole, 760 F.2d 1021, 1023 (9th Cir. 1985) (holding that plaintiff's injury was not redressable because, even if the court granted the requested injunctive relief, the injury would continue to occur).

Even assuming, arguendo, that "[r]eduction in ozone levels will alleviate Petitioners' harm," Pet. Br. at 31, this is not the relief that would result if the Court vacates EPA's approval of PEST-1. Vacatur of this approval would not reduce actual pollution levels, reduce the risk of pollution levels, or have any other real-world consequences because the substance of the SIP would be unaffected by vacatur. Even if EPA disapproved PEST-1 on remand, as Petitioners argue EPA should have done as an initial matter, Pet. Br. at 40, the identical Pesticide Element as approved in 1997 would remain in effect.

As explained above, Petitioners do not challenge EPA's statement that its approval of PEST-1 in 2009 simply maintains the status quo with respect to the existing Pesticide Element, nor do they dispute that either an approval or disapproval would have left the Pesticide Element intact. Instead, they claim that "EPA violated the Act by approving an unenforceable committal measure," Pet. Br. at 46, and that "EPA should have disapproved the Pesticide Element's commitment to adopt regulations," id. at 40. Were the Court to grant their request for vacatur and remand, on remand the agency would be presented with the same dilemma as in the original rulemaking – a false choice between identical outcomes. Just as before, any "deficiencies in the enforceability of the Pesticide Element, whatever they might be, [would be] the same," whether EPA approves or disapproves the 2003 submission. PER 006. Because a favorable ruling by this Court would not redress their alleged injuries, Petitioners lack standing to challenge EPA's approval of PEST-1. This claim should be dismissed.

B. EPA's Approval of the 2003 State Strategy's Commitment to Maintain the Status Quo With Respect to the Existing Approved "Pesticide Element" Did Not Entail a Substantive Review of That Element

California had originally intended the 2003 State Strategy to "entirely replace the existing State control strategy for the South Coast" with a new

strategy. PER 005. For the sake of completeness, and to allow for the wholesale replacement of the existing strategy for the South Coast with the new 2003 State Strategy, California included a proposal ("PEST-1") to continue its existing commitment to reduce VOC emissions from pesticide use (i.e., to continue the existing Pesticide Element).

California withdrew several key components of this new strategy in 2008, before EPA acted on the submission. See PER 010–011. This withdrawal foreclosed any possibility for the wholesale replacement of the existing state strategy for the South Coast, so technically there was no longer any need for the State to include the Pesticide Element as part of the package, as the previously-approved SIP already contained it. Nonetheless, California did not withdraw its commitment to continue the existing 1997-approved Pesticide Element. EPA was thus obliged either to approve or disapprove it.

Because PEST-1 was not a substantive revision to the approved SIP but merely a recognition of the state's existing obligation, and because no action it could have taken regarding PEST-1 could have altered the existing Pesticide Element, EPA was not required under the CAA to conduct a substantive review of the existing Pesticide Element. The submittal of PEST-1 was not itself federally required, nor was it included in a plan that was federally required, and PEST-1 did

nothing to change the existing SIP. Thus, EPA had two options, to approve or disapprove, neither of which could have rescinded the underlying strategy about which Petitioners complain. EPA approved the submission. As it explained in the final rule, EPA did not regard its action approving the submission as a substantive ruling on the merits of the Pesticide Element. Rather, it interpreted its approval as "maintaining the status quo with respect to the existing pesticide strategy." PER 006. This interpretation, unchallenged by Petitioners, merely recognizes that the existing approved Pesticide Element would remain in effect whether or not EPA approved the State's commitment in PEST-1 to continue to implement it.[10/]

III. EPA REASONABLY CONCLUDED THAT SCAQMD'S SUPPLEMENTAL DEMONSTRATION SATISFIES THE REQUIREMENT OF CAA SECTION 182(d)(1)(A) TO OFFSET ANY GROWTH IN EMISSIONS FROM GROWTH IN VEHICLE MILES TRAVELED OR NUMBERS OF VEHICLE TRIPS

As an "extreme" ozone nonattainment area, the South Coast Air Basin is subject to stringent control measure requirements. Among these is CAA section 182(d)(1)(A), which states in relevant part:

> Within 2 years after November 15, 1990, the State shall submit a revision that identifies and adopts specific enforceable transportation control

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[10/]Should the Court find that Petitioners have standing to challenge EPA's approval of PEST-1, and also find that EPA was required under the CAA to conduct a substantive review of the existing Pesticide Element, EPA respectfully requests that the Court remand this issue to EPA for that review.

> 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, to comply with the requirements of subsection (b)(2)(B) and (c)(2)(B) of this section (pertaining to periodic emissions reduction requirements).

42 U.S.C. § 7511a(d)(1)(A). Transportation control strategies and transportation control measures are hereinafter referred to collectively as "TCMs," and vehicle miles traveled and numbers of vehicle trips are referred to collectively as "VMT."[11/]

In its final rule, EPA approved SCAQMD's demonstration that projected motor vehicle emissions in the South Coast will decrease each year through the attainment year as satisfying the requirements of CAA section 182(d)(1)(A). EPA thus interprets CAA section 182(d)(1)(A) to allow a State to show that, notwithstanding an increase in VMT, aggregate motor vehicle emissions will decline each year through the attainment year through a variety of motor-vehicle-related emissions controls.

[11/]The phrase "transportation control strategies" refers generally to measures that are directed toward reducing emissions of air pollutants from transportation sources. The phrase "transportation control measures" refers to measures that reduce emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. See 42 U.S.C. § 7408(f)(1)(A) (listing examples of TCMs).

Under EPA's interpretation, a State must identify and adopt specific enforceable TCMs for the purpose of offsetting growth in VMT only if the emissions resulting from the projected increase in VMT will exceed the emissions-reducing effects of vehicle turnover and fuel specifications, leading to a projected year-over-year increase in motor vehicle emissions. Here, SCAQMD submitted a demonstration showing that motor vehicle emissions in the South Coast would decline each year through the attainment year, obviating the need to for the State to identify or adopt TCMs for the specific purpose of offsetting any emissions increases from VMT growth in the South Coast. See PER 017. EPA thus approved SCAQMD's demonstration as satisfying CAA section 182(d)(1)(A). As a result, California was not required to identify or adopt specific enforceable TCMs for the specific purpose of offsetting any emissions increases from VMT growth in the South Coast under the 1-hour ozone standard.

EPA's interpretation of the statute is reasonable, and must be upheld. As EPA has previously explained, see RER 045–46, the portion of CAA section 182(d)(1)(A) requiring States to identify and adopt TCMs "to offset any growth in emissions from growth in [VMT]" can be read in at least two opposing ways. EPA interprets the phrase to require offsetting TCMs only where VMT growth results in aggregate motor vehicle emissions increases. A mere growth in VMT or

numbers of vehicle trips would not trigger the duty to submit TCMs unless such growth results in an aggregate motor vehicle emissions increase in the area. Under EPA's interpretation, the State must establish the current level of motor vehicle emissions in the area, and also project what future motor vehicle emissions will be, taking into account all applicable control measures.

Petitioners, on the other hand, rely on a statement in the House Committee Report asserting that whether a "growth in emissions" from growth in VMT occurs should be determined by comparing emissions levels to what "would occur if VMT held constant in the area." See H.R. Rep. No. 101–490 at 242, reprinted in 2 A Legislative History of the Clean Air Act Amendments of 1990 (Comm. Print 1993) ("Legis. Hist.") at 3266 [Addendum ("ADD") 124]. This contrary view reads the phrase "growth in emissions" out of the statute by predicating the duty to submit TCMs solely on whether there has been growth in VMT. This interpretation disregards control measures (such as alternative fuel and tailpipe controls) that decrease aggregate motor vehicle emissions levels in the area. Whether Petitioners' interpretation is even plausible is not relevant. Because EPA's is reasonable, it must be upheld.

A. CAA Section 182(d)(1)(A) Directs States to Submit TCMs to Offset Any "Growth in Emissions" From Growth in VMT, But Does Not Require States to Offset VMT Growth Where Aggregate Vehicle Emissions Do Not Increase

Petitioners are mistaken that CAA section 182(d)(1)(A) requires TCMs to offset any growth in VMT, whether aggregate motor vehicle emissions are increasing or decreasing in the area. The plain language of the statute does not speak directly to the issue of how to determine whether there has been a "growth in emissions" due to growth in VMT.

Petitioners do not dispute California's demonstration of declining motor vehicle emissions each year in the South Coast through 2010, yet they argue that offsetting TCMs are nonetheless required because "VMT has increased in the South Coast Air Basin and . . . vehicle emissions are higher than they would be if VMT held constant in the area." Pet. Br. at 49. EPA has consistently rejected this interpretation, which would in this case and many others force States to ignore the beneficial impacts of all vehicle tailpipe and alternative fuel controls and require offsetting TCMs even while aggregate vehicle emissions are declining (and even where no such TCMs are needed to meet the reasonable-further-progress and attainment requirements under the CAA). See RER 045. Essentially, Petitioners' interpretation reads the "growth in emissions" phrase out of the statute, rendering

it mere surplusage, as if all the Act requires is a simplistic analysis of whether VMT is increasing.

Petitioners' challenge presents a question of statutory interpretation, which must be analyzed under the deferential two-part test of Chevron. CAA section 182(d)(1)(A) instructs EPA and the States to undertake some kind of analysis to determine: a) whether there has been "any growth in emissions," and b) whether that growth in emissions resulted "from growth in vehicle miles traveled or numbers of vehicle trips in such area." That is, use of the word "growth" in reference to both "emissions" and "[VMT]" suggests two baselines, one pegged to changes in emissions and the other pegged to changes in VMT. The statute does not mandate submission of TCMs where there is only "growth in emissions" with no relationship to VMT, nor where there is "growth in VMT" with no relationship to emissions. Rather, there must be growth in both emissions and in VMT, and the latter must be the cause of the former. The question is how to conduct the analysis for these two determinations – i.e., whether the statute can reasonably be read as not requiring States to submit TCMs where they can show that, notwithstanding growth in VMT, there is no consequential increase in motor vehicle emissions.

Petitioners' interpretation of the statute reads the preposition "from" connecting the phrase "growth in emissions" and "growth in [VMT]" as

mandating a single baseline pegged solely to changes in VMT. This reading unreasonably views the phrase "growth in emissions from growth in [VMT]" in isolation from other factors affecting motor vehicle emissions. This reading also renders the qualifying phrase "growth in" (in reference to emissions) mere surplusage, for the requirement to adopt TCMs "to offset any growth in emissions from growth in [VMT]" would have precisely the same meaning as a requirement to adopt TCMs "to offset emissions from growth in [VMT]." This violates a fundamental canon of statutory construction: that "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." Corley v. United States, 129 S. Ct. 1558, 1566 (2009). In contrast, EPA's interpretation gives meaning to both "growth in emissions" and "growth in [VMT]."

While the statute is clear that the duty to submit TCMs is contingent on a "growth in emissions" resulting from growth in VMT, it is ambiguous regarding how this prerequisite "growth in emissions" is to be established or substantiated. Growth in emissions might be measured according to whether growth in VMT will result in an aggregate increase in motor vehicle emissions.[12/] This is EPA's

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[12/] EPA interprets this provision to require that sufficient measures be adopted so that projected motor vehicle emissions will never be higher during the ozone

(continued...)

approach. Alternatively, as Petitioners assert, growth in emissions might be measured according to whether vehicle emissions are higher than they would have been (even if they may have actually decreased due to other controls) if VMT remained constant.

Petitioners argue that the plain language of the statute speaks directly to the issue of the appropriate baseline from which to judge whether, and to what extent, TCMs are required. To support this assertion, they identify a "key clause," which omits the words "growth in" prior to "emissions from growth in [VMT]." Pet. Br. at 51. Of course, without the words "growth in" prior to the word "emissions" in the clause "growth in emissions from growth in [VMT]," the phrase is indeed unambiguous. However, the statute is not written that way. The key clause is actually "growth in emissions from growth in [VMT]," and for the reasons set forth above, it is ambiguous.

(...continued)
season in one year than during the ozone season in the year before. RER 044–45. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. Id. The emissions level at the point of upturn becomes a ceiling on motor vehicle emissions. Id. For EPA's detailed explanation of this analytical approach, see RER 044–46.

Because the statutory language is susceptible to both these interpretations, it is therefore "ambiguous" for purposes of Chevron, and any reasonable EPA interpretation must be upheld.

B. EPA Reasonably Concluded That SCAQMD's Demonstration Satisfies the Requirement Under CAA Section 182(d)(1)(A) To Adopt TCMs to Offset Any Increase In Emissions From Growth In VMT

As discussed above, CAA section 182(d)(1)(A) does not specify the baseline for determining whether there has been a "growth in emissions" due to growth in VMT, and here EPA determined that no offsetting TCMs were required given SCAQMD's demonstration that aggregate motor vehicle emissions, taking into account growth in VMT as well as motor-vehicle related controls, would decrease each year through the attainment year. PER 005 and 017. EPA has long interpreted this provision to require offsetting TCMs only where VMT growth results in aggregate motor vehicle emissions increases, thus requiring States to conduct a detailed factual analysis of whether aggregate motor vehicle emissions are increasing, even in the face of a myriad of control measures, due to that VMT increase. See RER 045–46. Because the statute is ambiguous, the only question under Chevron step two is whether EPA's interpretation is "based on a permissible construction of the statute." Chevron, 467 U.S. at 843.

First, EPA's long-established and consistent application of this interpretation is entitled to especially great deference under Chevron. Barnhart v. Walton, 535 U.S. 212, 220 (2002) ("[T]his Court will normally accord particular deference to an agency interpretation of longstanding duration.") (internal quotation omitted). EPA has applied this interpretation, even in response to adverse comments, in many rulemakings since the enactment of the 1990 amendments to the Act that added the TCM offset provision. See, e.g., 60 Fed. Reg. 48,896, 48,898 (Sept. 21, 1995) (final approval of Illinois' SIP); 62 Fed. Reg. 23,410, 23,417 (Apr. 30, 1997) and 62 Fed. Reg. 35,100 (Jun. 30, 1997) (proposed and final approval of New Jersey's SIP); 66 Fed. Reg. 57,247, 57,248–49 (Nov. 14, 2001) (final approval of Texas' SIP).

Second, EPA's interpretation is consistent with the purposes of the Act, and is reasonable in context of the statutory scheme as a whole, as shown by the Agency's explanation in the General Preamble and numerous rulemaking actions. The TCM offset requirement aims to prevent growth in motor vehicle emissions from outweighing emission reduction benefits obtained through other provisions of the CAA.

The TCM offset provision is simply one of many provisions in the Act aimed at attaining the ozone NAAQS. In context of the "intricate planning

requirements Congress established in title I to bring areas towards attainment of the ozone standard," RER 045, EPA's approach of viewing the TCM offset requirement in light of other emissions reductions measures is reasonable because it recognizes that the Act's various provisions work in tandem to attain the NAAQS. This interpretation is not "toothless," Pet. Br. at 55, for it ensures that when growth in VMT is projected to cause an upturn in aggregate motor vehicle emissions that jeopardizes the emissions reductions achieved by other motor vehicle control measures, the State must offset the increase with TCMs as specified by the Act.

Petitioners claim that EPA's interpretation gives effect only to the second clause of section 182(d)(1)(A) (i.e., adopting TCMs to attain motor vehicle emissions reductions as necessary to comply with periodic emissions reduction requirements) and ignores the first (i.e., adopting TCMs to offset growth in emissions from growth in VMT). Pet. Br. at 53–54. While this second clause also refers to reductions in motor vehicle emissions, it too does not specify a baseline and may well require more or fewer TCMs, on a different implementation schedule, than would be necessary to meet the year-over-year reductions in aggregate motor vehicle emissions required under EPA's interpretation of the first clause (i.e., the TCM offset provision) of section 182(d)(1)(A). Thus, EPA's

interpretation does not, as Petitioners argue, "ascribe the two clauses of section 182(d)(1)(A) with the same meaning." Id.

Third, while snippets of legislative history may be read, in isolation, to support Petitioners' contrary interpretation, reliance on that legislative history alone is not sufficient to bar EPA's interpretation as unreasonable.[13/] Moreover, as EPA has explained, applying as the "baseline for whether there has been growth in emissions due to increased VMT [...] the level of vehicle emissions that would occur if VMT held constant in the area," 2 Legis. Hist. at 3266 [ADD 124], "would have drastic implications for many of the areas subject to the provision," RER 045. In cities where VMT is growing at high rates, such as Los Angeles, draconian TCMs like mandatory no-drive-day restrictions would have to be imposed to fully offset increased VMT rates, even while ignoring beneficial

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[13/] Petitioners rely heavily on the House Committee Report ("The baseline for determining whether there has been growth in emissions ... is the level of vehicle emissions that would occur if VMT held constant in the area," 2 Legis. Hist. at 3266–67 [ADD 124], in support of their alternative interpretation of section 182(d)(1)(A). However, as set forth in the Chafee-Baucus Statement of Senate Managers, the Senate view, rather than the House view, of the relevant required transportation controls was the one ultimately enacted. 1 Legis. Hist. at 883 ("With respect to transportation controls in severe and extreme areas (new section 182(d)(1) of the Clean Air Act), the House recedes to the Senate . . . .") [ADD 111]. Thus, the House Committee Report's gloss on the applicable baseline for implementing the TCM offset provision holds little weight in determining congressional intent.

impacts of vehicle tailpipe and alternative fuel controls that result in an actual absence of "growth in" motor vehicle emissions. Id.

Petitioners' citation to other legislative history – a statement by Representative Manton on the Conference Report, excerpts from the Senate Committee Report and the Conference Report, and a statement from Senator Lieberman discussing the Senate bill – are similarly unavailing because they shed no light on what baseline to use for determining whether, and to what extent, there will be growth in emissions due to growth in VMT.

Petitioners' reliance on the statement of Representative Manton in the House debate on the Conference Report that "the specific provisions [are] to offset growth in vehicle miles traveled," 1 Legis. Hist. at 1304 [ADD 117], and on the Senate Committee Report's reading of the Senate bill to "offset growth in vehicle miles traveled," 5 Legis. Hist. at 8384 [ADD 134], actually undermines Petitioners' interpretation, as neither of those statements accurately captures what the statutory language addressed – a "growth in emissions from" the separate growth in VMT. EPA does not believe it would be reasonable to read the "growth in emissions from" phrase out of the Act based on such minimal, short-hand, and inaccurate descriptions of section 182(d)(1)(A) in the legislative history. Viewed in the fuller context in which it was made, Representative Manton's statement was

clearly focused on the requirement that States avoid TCMs that simply "relocate emissions and congestion," 1 Legis. Hist. at 1304 [ADD 117], not on what baseline States must use to comply with the TCM offset requirement.

Similarly, the observations presented by Senator Baucus in the Clean Air Conference Report, 1 Legis. Hist. at 1006–07 [ADD 113–114], and Senator Lieberman in discussing the Senate bill, 4 Legis. Hist. at 4878 [ADD 129], in no way purport to interpret the precise meaning of "any growth in emissions from growth in" VMT, and therefore do nothing to rebut EPA's interpretation. Senator Lieberman's statement merely reflects his expectation that, under the Senate bill, "it may become necessary to implement transportation control measures to reduce our reliance on the automobile," 4 Legis. Hist. at 4878 [ADD 129] (emphasis added), in addition to strict controls on emissions from motor vehicles. Under the petitioners' interpretation of the TCM offset requirement, TCMs would necessarily be required to offset VMT given the well-known inexorable increases in VMT throughout the country. See, e.g., PER 161.

Later in the same statement, Senator Lieberman states: "Our legislation . . . would also encourage severely polluted regions to adopt transportation controls, though the decision as to what controls to implement would be left up to the States. Our bill does not impose any requirement for taxes, rationing, or tolls." 4

Legis. Hist. at 4879 [ADD 130]. These are precisely the types of TCMs that States would have to resort to if Petitioners' interpretation of the VMT offset requirement were to be given effect.[14/]

The Court should uphold EPA's approval of SCAQMD's demonstration, based on EPA's reasonable interpretation of 42 U.S.C. § 7511a(d)(1)(A).

CONCLUSION

For the reasons set forth above, EPA respectfully requests that the Court deny the petitions.

[14/]Petitioners challenge EPA's assertion that Petitioners' interpretation of the TCM offset requirement would result in States having to impose "draconian" TCMs, citing the initial inclusion of "several modest but effective TCMs" in the 2003 South Coast AQMP, Pet. Br. at 55, yet they make no showing that the TCMs initially included in the 2003 South Coast AQMP would have even come close to offsetting the increase in VMT from the base year. To put in perspective the burden on States under Petitioners' interpretation, one need only examine a few pages of the 2003 South Coast AQMP to see that the emissions reductions expected from the TCMs included in the plan would fall far short of the total emissions reduction needed to offset the increase in VMT. First, the 2003 South Coast AQMP shows that the plan is based on a forecast of a 31% increase in VMT from 1997 to 2010. PER 161. In 2010, motor vehicle emissions are projected in the plan to be 210 tons per day of VOC. PER 164 (Table 3-4B). Under Petitioners' interpretation, TCMs by the State would be required to offset emissions equal to 31% of motor vehicle emissions in 2010, or approximately 50 tons per day of VOC [i.e., 210 minus (210 divided by 1.31, or 160) = 50]. In contrast, the 2003 South Coast AQMP expected the TCMs included in the plan to achieve only 5 tons per day of VOC reduction by 2010 – an order of magnitude less than necessary to fully offset the increase in VMT. See PER 179.

Respectfully submitted,

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment & Natural Resources Division

/s/Austin D. Saylor
AUSTIN D. SAYLOR
Trial Attorney
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-1880

OF COUNSEL:

JAN M. TIERNEY
U.S. Environmental Protection Agency
Office of General Counsel
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 2344A
Washington, D.C. 20460
(202) 564-5598

JEFFERSON L. WEHLING
U.S. Environmental Protection Agency
Region IX
Office of Regional Counsel
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3901

STATEMENT OF RELATED CASES

In El Comité para el Bienestar de Earlimart, et al. v. EPA, et al., No. 08-74340 (9th Cir.), Petitioners Association of Irritated Residents and other groups attempt to challenge EPA's 1997 approval of the 1994 California Ozone State Implementation Plan. On June 30, 2009, this Court denied Petitioners' motion to consolidate No. 08-74340 with these Petitions (Nos. 09-71383 and 09-71404), but ordered that all three Petitions be calendared together for oral argument. On October 19, 2009, the Court reset the briefing schedule in No. 08-74340 as follows: the administrative record shall be filed by January 21, 2010; Petitioners shall file an opening brief on March 22, 2010; Respondents shall file an answering brief on or before May 21, 2010; Petitioners may file an optional reply on or before June 21, 2010.

CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). This brief is proportionally spaced, has a 14-point typeface, and contains 13,845 words, as counted by Corel WordPerfect X3, excluding the portions of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

/s/Austin D. Saylor
AUSTIN D. SAYLOR
Trial Attorney
U.S. Department of Justice
Environment & Natural Res. Div.
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-1880

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing BRIEF FOR RESPONDENTS, and a Statutory and Regulatory Addendum, with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 4, 2009.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/Austin D. Saylor
AUSTIN D. SAYLOR
Trial Attorney
U.S. Department of Justice
Environment & Natural Res. Div.
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-1880

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Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 7. Judicial Review (Refs & Annos)
§ 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 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.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

Current through P.L. 111-82 approved 10-26-09

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)
§ 7401. Congressional findings and declaration of purpose

(a) Findings

The Congress finds--

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) Declaration

The purposes of this subchapter are--

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and con-

trol of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

(c) Pollution prevention

A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 101, formerly § 1, as added Dec. 17, 1963, Pub.L. 88-206, § 1, 77 Stat. 392, and renumbered § 101 and amended Oct. 20, 1965, Pub.L. 89-272, Title I, § 101(2), (3), 79 Stat. 992; Nov. 21, 1967, Pub.L. 90-148, § 2, 81 Stat. 485; Nov. 15, 1990, Pub.L. 101-549, Title I, § 108(k), 104 Stat. 2468.)

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END OF DOCUMENT

Effective: January 23, 2004

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)
§ 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 7410 of this title--

(1) an air quality control region designated under this section before December 31, 1970, or a region designated after such date under subsection (c) of this section, 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 December 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 7409 of this title, 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 intends to make a modification, 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 November 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 November 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 November 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 (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 7410(k) of this title;

(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 7505a of this title; and

(v) the State containing such area has met all requirements applicable to the area under section 7410 of this title and part D of this subchapter.

(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 November 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 subchapter 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 November 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 November 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 November 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 November 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 7473(b) of this title, 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 November 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 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”.

(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 7492(e)(1) of this title (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) of this section 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 7413(d)(5) of this title (relating to coal conversion) shall cease to be effective by reason of the regional limitation provided in section 7413(d)(5) of this title if the violation of such limitation is due solely to a redesignation of a region under this subsection.

CREDIT(S)

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

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Effective: November 10, 1998

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Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)
§ 7408. Air quality criteria and control techniques

(a) Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant--

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before December 31, 1970, but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on--

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

(b) Issuance by Administrator of information on air pollution control techniques; standing consulting committees for air pollutants; establishment; membership

(1) Simultaneously with the issuance of criteria under subsection (a) of this section, the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) In order to assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a)(1) of this section, which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

(c) Review, modification, and reissuance of criteria or information

The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section. Not later than six months after August 7, 1977, the Administrator shall revise and reissue criteria relating to concentrations of NO_2 over such period (not more than three hours) as he deems appropriate. Such criteria shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

(d) Publication in Federal Register; availability of copies for general public

The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public.

(e) Transportation planning and guidelines

The Administrator shall, after consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, and with State and local officials, within nine months after November 15, 1990, and periodically thereafter as necessary to maintain a continuous transportation-air quality planning process, update the June 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. Such guidelines shall include information on--

(1) methods to identify and evaluate alternative planning and control activities;

(2) methods of reviewing plans on a regular basis as conditions change or new information is presented;

(3) identification of funds and other resources necessary to implement the plan, including interagency agreements on providing such funds and resources;

(4) methods to assure participation by the public in all phases of the planning process; and

(5) such other methods as the Administrator determines necessary to carry out a continuous planning process.

(f) Information regarding processes, procedures, and methods to reduce or control pollutants in transportation; reduction of mobile source related pollutants; reduction of impact on public health

(1) The Administrator shall publish and make available to appropriate Federal, State, and local environmental and transportation agencies not later than one year after November 15, 1990, and from time to time thereafter--

(A) information prepared, as appropriate, in consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, regarding the formulation and emission reduction potential of transportation control measures related to criteria pollutants and their precursors, including, but not limited to--

(i) programs for improved public transit;

(ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;

(iii) employer-based transportation management plans, including incentives;

(iv) trip-reduction ordinances;

(v) traffic flow improvement programs that achieve emission reductions;

(vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit service;

(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

(x) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xi) programs to control extended idling of vehicles;

(xii) programs to reduce motor vehicle emissions, consistent with subchapter II of this chapter, which are caused by extreme cold start conditions;

(xiii) employer-sponsored programs to permit flexible work schedules;

(xiv) programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) programs for new construction and major reconstructions of paths, tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and

(xvi) program to encourage the voluntary removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model light duty trucks.

(B) information on additional methods or strategies that will contribute to the reduction of mobile source related pollutants during periods in which any primary ambient air quality standard will be exceeded and during episodes for which an air pollution alert, warning, or emergency has been declared;

(C) information on other measures which may be employed to reduce the impact on public health or protect the health of sensitive or susceptible individuals or groups; and

(D) information on the extent to which any process, procedure, or method to reduce or control such air pollutant may cause an increase in the emissions or formation of any other pollutant.

(2) In publishing such information the Administrator shall also include an assessment of--

(A) the relative effectiveness of such processes, procedures, and methods;

(B) the potential effect of such processes, procedures, and methods on transportation systems and the provision of transportation services; and

(C) the environmental, energy, and economic impact of such processes, procedures, and methods.

(g) Assessment of risks to ecosystems

The Administrator may assess the risks to ecosystems from exposure to criteria air pollutants (as identified by the Administrator in the Administrator's sole discretion).

(h) RACT/BACT/LAER clearinghouse

The Administrator shall make information regarding emission control technology available to the States and to the general public through a central database. Such information shall include all control technology information received pursuant to State plan provisions requiring permits for sources, including operating permits for existing sources.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 108, as added Dec. 31, 1970, Pub.L. 91-604, § 4(a), 84 Stat. 1678, and amended Aug. 7, 1977, Pub.L. 95-95, Title I, §§ 104, 105, Title IV, § 401(a), 91 Stat. 689, 790; Nov. 15, 1990, Pub.L. 101-549, Title I, §§ 108(a) to (c), (o), 111, 104 Stat. 2465, 2466, 2469, 2470; Nov. 10, 1998, Pub.L. 105-362, Title XV, § 1501(b), 112 Stat. 3294.)

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United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)

§ 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 7409 of this title 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 chapter 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 chapter;

(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 of this subchapter;

(D) contain adequate provisions--

(i) prohibiting, consistent with the provisions of this subchapter, 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 of this subchapter to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (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 7428 of this title, 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 chapter, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in section 7603 of this title 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 chapter;

(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 of this subchapter (relating to nonattainment areas);

(J) meet the applicable requirements of section 7421 of this title (relating to consultation), section 7427 of this title (relating to public notification), and part C of this subchapter (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 chapter, 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 subchapter V of this chapter; and

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

(3)(A) Repealed. Pub.L. 101-549, Title I, § 101(d)(1), Nov. 15, 1990, 104 Stat. 2409

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C.A. § 791 et seq.], 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) of this section, shall be required to revise an applicable implementation plan because one or more exemptions under section 7418 of this title (relating to Federal facilities), enforcement orders under section 7413(d) of this title, suspensions under subsection (f) or (g) of this section (relating to temporary energy or economic authority), orders under section 7419 of this title (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under section 7413(e) of this title (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. Pub.L. 101-549, Title I, § 101(d)(2), Nov. 15, 1990, 104 Stat. 2409

(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 this subsection to suspend or re-

voke 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 subsection (c) of this section 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 subsection (c)(2)(D)(ii) of this section), 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 7413(d) of this title or section 7419 of this title (relating to primary nonferrous smelter orders), 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 subsection (k)(1)(A) of this section, 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. Pub.L. 101-549, Title I, § 101(d)(3)(A), Nov. 15, 1990, 104 Stat. 2409

(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 June 22, 1974. 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. Pub.L. 101-549, Title I, § 101(d)(3)(B), Nov. 15, 1990, 104 Stat. 2409

(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 June 22, 1974, by the Administrator pursuant to this section, unless such pro-

mulgation 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. Pub.L. 101-549, Title I, § 101(d)(3)(C), Nov. 15, 1990, 104 Stat. 2409

(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 August 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 of this subchapter.

(d), (e) Repealed. Pub.L. 101-549, Title I, § 101(d)(4), (5), Nov. 15, 1990, 104 Stat. 2409

(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 7651j of this title (concerning excess emissions penalties or offsets) 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 7651j of this title (concerning excess emissions penalties or offsets) 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 1857c-10 of this title, as in effect before August 7, 1977, or section 7413(d) of this title, upon a finding that such source is unable to comply with such schedule (or incre-

ment) 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 1857c-10 of this title as in effect before August 7, 1977, or under section 7413(d) of this title 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 November 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 7419 of this title, a suspension under subsection (f) or (g) of this section (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d) of this title (relating to compliance orders), a plan promulgation under subsection (c) of this section, or a plan revision under subsection (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 subchapter, 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 chapter.

(k) Environmental Protection Agency action on plan submissions

(1) Completeness of plan submissions

(A) Completeness criteria

Within 9 months after November 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 chapter.

(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 chapter. If a portion of the plan revision meets all the applicable requirements of this chapter, 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 chapter until the Administrator approves the entire plan revision as complying with the applicable requirements of this chapter.

(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 7506a of this title or section 7511c of this title, or to otherwise comply with any requirement of this chapter, 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 chapter 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 of this subchapter, 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 chapter 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 7501 of this title), or any other applicable requirement of this chapter.

(m) Sanctions

The Administrator may apply any of the sanctions listed in section 7509(b) of this title at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under paragraphs (1) through (4), respectively, of section 7509(a) of this title in relation to any plan or plan item (as that term is defined by the Administrator) required under this chapter, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this chapter 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 7509(a) of this title to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in section 7509(a) of this title, 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 November 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 chapter.

(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 November 15, 1990, or

(B) in response to a finding of substantial inadequacy under subsection (a)(2) of this section (as in effect immediately before November 15, 1990),

shall provide for attainment of the national primary ambient air quality standards within 3 years of Novem-

ber 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 November 15, 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) of this section (as in effect immediately before November 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 7502(b)(6) of this title (relating to establishment of a permit program) (as in effect immediately before November 15, 1990) or 7502(a)(1) of this title (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 November 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 7502(c)(5) of this title (relating to permit programs) or subpart 5 of part D of this subchapter (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 7601(d) of this title, 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 7601(d)(2) of this title. When such plan becomes effective in accordance with the regulations promulgated under section 7601(d) of this title, 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 chapter.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 110, as added Dec. 31, 1970, Pub.L. 91-604, § 4(a), 84 Stat. 1680, and amended June 22, 1974, Pub.L. 93-319, § 4, 88 Stat. 256; S.Res. 4, Feb. 4, 1977; Aug. 7, 1977, Pub.L. 95-95, Title I, §§ 107, 108, 91 Stat. 691, 693; Nov. 16, 1977, Pub.L. 95-190, § 14(a)(1)-(6), 91 Stat. 1399; July 17, 1981, Pub.L. 97-23, § 3, 95 Stat. 142; Nov. 15, 1990, Pub.L. 101-549, Title I, §§ 101(b)-(d), 102(h), 107(c), 108(d), Title IV, § 412, 104 Stat. 2404-2408, 2422, 2464, 2466, 2634.)

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Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)
§ 7413. Federal enforcement

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of Title 28)--

(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as “period of federally assumed enforcement”), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by--

(A) issuing an order requiring such person to comply with such requirement or prohibition,

(B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

(C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may--

(A) issue an administrative penalty order in accordance with subsection (d) of this section,

(B) issue an order requiring such person to comply with such requirement or prohibition,

(C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or

(D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or ap-

plicable implementation plan promulgated or approved under this chapter.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources, the Administrator may--

(A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies; [FN1]

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) of this section at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both, in any of the following instances:

(1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced (A) during any period of federally assumed enforcement, or (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such person has violated, or is in violation of, such requirement or prohibition.

(2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).

(3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

(1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411(e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475(a) of this title (relating to preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a(a) or 7661b(c) of this title (relating to permits), or any requirement or prohibition of subchapter IV-A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to Title 18, or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly--

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this chapter; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter [FN2]

shall, upon conviction, be punished by a fine pursuant to Title 18, or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV-A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to Title 18, or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under Title 18, or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under Title 18, or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than $1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

(B) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury--

(i) the defendant is responsible only for actual awareness or actual belief possessed; and

(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of--

(i) an occupation, a business, or a profession; or

(ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(E) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(F) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(6) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602(e) of this title, any responsible corporate officer.

(d) Administrative assessment of civil penalties

(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person--

(A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued (i) during any period of federally assumed enforcement, or (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

(B) has violated or is violating any other requirement or prohibition of this subchapter or subchapter III, IV-A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver,

permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

(C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of Title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of Title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator

and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order--

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of Title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

(1) In determining the amount of any penalty to be assessed under this section or section 7604(a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607(a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604(a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollu-

tion control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed $10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV-A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer, or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

For purposes of the provisions of this section and section 7420 of this title, the term “operator”, as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term “a person” shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term “a person” shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 113, as added Dec. 31, 1970, Pub.L. 91-604, § 4(a), 84 Stat. 1686, and amended Nov. 18, 1971, Pub.L. 92-157, Title III, § 302(b), (c), 85 Stat. 464; June 22, 1974, Pub.L. 93-319, § 6(a)(1) to (3), 88 Stat. 259; Aug. 7, 1977, Pub.L. 95-95, Title I, §§ 111, 112(a), 91 Stat. 704, 705; Nov. 16, 1977, Pub.L. 95-190, § 14(a)(10) to (21), (b)(1), 91 Stat. 1400, 1404; July 17, 1981, Pub.L. 97-23, § 2, 95 Stat. 139; Nov. 15, 1990, Pub.L. 101-549, Title VII, § 701, 104 Stat. 2672.)

[FN1] So in original. The semicolon probably should be a comma.

[FN2] So in original. Probably should be followed by a comma.

Current through P.L. 111-82 approved 10-26-09

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part D. Plan Requirements for Nonattainment Areas
Subpart 1. Nonattainment Areas in General (Refs & Annos)
§ 7502. Nonattainment plan provisions in general

(a) Classifications and attainment dates

(1) Classifications

(A) On or after the date the Administrator promulgates the designation of an area as a nonattainment area pursuant to section 7407(d) of this title with respect to any national ambient air quality standard (or any revised standard, including a revision of any standard in effect on November 15, 1990), the Administrator may classify the area for the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes. In determining the appropriate classification, if any, for a nonattainment area, the Administrator may consider such factors as the severity of nonattainment in such area and the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment of such standard in such area.

(B) The Administrator shall publish a notice in the Federal Register announcing each classification under subparagraph (A), except the Administrator shall provide an opportunity for at least 30 days for written comment. Such classification shall not be subject to the provisions of sections 553 through 557 of Title 5 (concerning notice and comment) and shall not be subject to judicial review until the Administrator takes final action under subsection (k) or (l) of section 7410 of this title (concerning action on plan submissions) or section 7509 of this title (concerning sanctions) with respect to any plan submissions required by virtue of such classification.

(C) This paragraph shall not apply with respect to nonattainment areas for which classifications are specifically provided under other provisions of this part.

(2) Attainment dates for nonattainment areas

(A) The attainment date for an area designated nonattainment with respect to a national primary ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment under section 7407(d) of this title, except that the Administrator may extend the attainment date to the extent the Administrator determines appro-

priate, for a period no greater than 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

(B) The attainment date for an area designated nonattainment with respect to a secondary national ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable after the date such area was designated nonattainment under section 7407(d) of this title.

(C) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the attainment date determined by the Administrator under subparagraph (A) or (B) if--

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

(ii) in accordance with guidance published by the Administrator, no more than a minimal number of exceedances of the relevant national ambient air quality standard has occurred in the area in the year preceding the Extension Year.

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

(D) This paragraph shall not apply with respect to nonattainment areas for which attainment dates are specifically provided under other provisions of this part.

(b) Schedule for plan submissions

At the time the Administrator promulgates the designation of an area as nonattainment with respect to a national ambient air quality standard under section 7407(d) of this title, the Administrator shall establish a schedule according to which the State containing such area shall submit a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) of this section and section 7410(a)(2) of this title. Such schedule shall at a minimum, include a date or dates, extending no later than 3 years from the date of the nonattainment designation, for the submission of a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) of this section and section 7410(a)(2) of this title.

(c) Nonattainment plan provisions

The plan provisions (including plan items) required to be submitted under this part shall comply with each of the following:

(1) In general

Such plan provisions shall provide for the implementation of all reasonably available control measures as ex-

peditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.

(2) RFP

Such plan provisions shall require reasonable further progress.

(3) Inventory

Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.

(4) Identification and quantification

Such plan provisions shall expressly identify and quantify the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 7503(a)(1)(B) of this title, from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date.

(5) Permits for new and modified major stationary sources

Such plan provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 7503 of this title.

(6) Other measures

Such plan provisions shall include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified in this part.

(7) Compliance with section 7410(a)(2)

Such plan provisions shall also meet the applicable provisions of section 7410(a)(2) of this title.

(8) Equivalent techniques

Upon application by any State, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the ag-

gregate, less effective than the methods specified by the Administrator.

(9) Contingency measures

Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.

(d) Plan revisions required in response to finding of plan inadequacy

Any plan revision for a nonattainment area which is required to be submitted in response to a finding by the Administrator pursuant to section 7410(k)(5) of this title (relating to calls for plan revisions) must correct the plan deficiency (or deficiencies) specified by the Administrator and meet all other applicable plan requirements of section 7410 of this title and this part. The Administrator may reasonably adjust the dates otherwise applicable under such requirements to such revision (except for attainment dates that have not yet elapsed), to the extent necessary to achieve a consistent application of such requirements. In order to facilitate submittal by the States of adequate and approvable plans consistent with the applicable requirements of this chapter, the Administrator shall, as appropriate and from time to time, issue written guidelines, interpretations, and information to the States which shall be available to the public, taking into consideration any such guidelines, interpretations, or information provided before November 15, 1990.

(e) Future modification of standard

If the Administrator relaxes a national primary ambient air quality standard after November 15, 1990, the Administrator shall, within 12 months after the relaxation, promulgate requirements applicable to all areas which have not attained that standard as of the date of such relaxation. Such requirements shall provide for controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 172, as added Aug. 7, 1977, Pub.L. 95-95, Title I, § 129(b), 91 Stat. 746, and amended Nov. 16, 1977, Pub.L. 95-190, § 14(a)(55), (56), 91 Stat. 1402; Nov. 15, 1990, Pub.L. 101-549, Title I, § 102(b), 104 Stat. 2412.)

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END OF DOCUMENT

Effective: August 10, 2005

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part D. Plan Requirements for Nonattainment Areas
Subpart 1. Nonattainment Areas in General (Refs & Annos)
§ 7506. Limitations on certain Federal assistance

(a), (b) Repealed. Pub.L. 101-549, Title I, § 110(4), Nov. 15, 1990, 104 Stat. 2470

(c) Activities not conforming to approved or promulgated plans

(1) No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan after it has been approved or promulgated under section 7410 of this title. No metropolitan planning organization designated under section 134 of Title 23, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 7410 of this title. The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality. 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;

(ii) increase the frequency or severity of any existing violation of any standard in any area; or

(iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates.

(2) Any transportation plan or program developed pursuant to Title 23 or chapter 53 of Title 49 shall implement the transportation provisions of any applicable implementation plan approved under this chapter applicable to all or part of the area covered by such transportation plan or program. No Federal agency may approve, accept or fund any transportation plan, program or project unless such plan, program or project has been found to conform to any applicable implementation plan in effect under this chapter. In particular--

(A) no transportation plan or transportation improvement program may be adopted by a metropolitan planning organization designated under Title 23 or chapter 53 of Title 49, or be found to be in conformity by a metropolitan planning organization until a final determination has been made that emissions expected from implementation of such plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan, and that the plan or program will conform to the requirements of paragraph (1)(B);

(B) no metropolitan planning organization or other recipient of funds under Title 23 or chapter 53 of Title 49 shall adopt or approve a transportation improvement program of projects until it determines that such program provides for timely implementation of transportation control measures consistent with schedules included in the applicable implementation plan;

(C) a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under Title 23 or chapter 53 of Title 49, or found in conformity by a metropolitan planning organization or approved, accepted, or funded by the Department of Transportation only if it meets either the requirements of subparagraph (D) or the following requirements--

(i) such a project comes from a conforming plan and program;

(ii) the design concept and scope of such project have not changed significantly since the conformity finding regarding the plan and program from which the project derived; and

(iii) the design concept and scope of such project at the time of the conformity determination for the program was adequate to determine emissions.

(D) Any project not referred to in subparagraph (C) shall be treated as conforming to the applicable implementation plan only if it is demonstrated that the projected emissions from such project, when considered together with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause such plans and programs to exceed the emission reduction projections and schedules assigned to such plans and programs in the applicable implementation plan.

(E) The appropriate metropolitan planning organization shall redetermine conformity of existing transportation plans and programs not later than 2 years after the date on which the Administrator--

(i) finds a motor vehicle emissions budget to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004);

(ii) approves an implementation plan that establishes a motor vehicle emissions budget if that budget has not yet been determined to be adequate in accordance with clause (i); or

(iii) promulgates an implementation plan that establishes or revises a motor vehicle emissions budget.

(3) Until such time as the implementation plan revision referred to in paragraph (4)(C) is approved, conformity of such plans, programs, and projects will be demonstrated if--

(A) the transportation plans and programs--

(i) are consistent with the most recent estimates of mobile source emissions;

(ii) provide for the expeditious implementation of transportation control measures in the applicable implementation plan; and

(iii) with respect to ozone and carbon monoxide nonattainment areas, contribute to annual emissions reductions consistent with sections 7511a(b)(1) and 7512a(a)(7) of this title; and

(B) the transportation projects--

(i) come from a conforming transportation plan and program as defined in subparagraph (A) or for 12 months after November 15, 1990, from a transportation program found to conform within 3 years prior to November 15, 1990; and

(ii) in carbon monoxide nonattainment areas, eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

With regard to subparagraph (B)(ii), such determination may be made as part of either the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development.

(4) Criteria and procedures for determining conformity

(A) In general

The Administrator shall promulgate, and periodically update, criteria and procedures for determining con-

formity (except in the case of transportation plans, programs, and projects) of, and for keeping the Administrator informed about, the activities referred to in paragraph (1).

(B) Transportation plans, programs, and projects

The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update, criteria and procedures for demonstrating and assuring conformity in the case of transportation plans, programs, and projects.

(C) Civil action to compel promulgation

A civil action may be brought against the Administrator and the Secretary of Transportation under section 7604 of this title to compel promulgation of such criteria and procedures and the Federal district court shall have jurisdiction to order such promulgation.

(D) The procedures and criteria shall, at a minimum--

(i) address the consultation procedures to be undertaken by metropolitan planning organizations and the Secretary of Transportation with State and local air quality agencies and State departments of transportation before such organizations and the Secretary make conformity determinations;

(ii) address the appropriate frequency for making conformity determinations, but the frequency for making conformity determinations on updated transportation plans and programs shall be every 4 years, except in a case in which--

(I) the metropolitan planning organization elects to update a transportation plan or program more frequently; or

(II) the metropolitan planning organization is required to determine conformity in accordance with paragraph (2)(E); and

(iii) address how conformity determinations will be made with respect to maintenance plans.

(E) Inclusion of criteria and procedures in SIP

Not later than 2 years after August 10, 2005, the procedures under subparagraph (A) shall include a requirement that each State include in the State implementation plan criteria and procedures for consultation required by subparagraph (D)(i), and enforcement and enforceability (pursuant to sections 93.125(c) and 93.122(a)(4)(ii) of title 40, Code of Federal Regulations) in accordance with the Administrator's criteria and procedures for consultation, enforcement and enforceability.

(F) Compliance with the rules of the Administrator for determining the conformity of transportation plans, programs, and projects funded or approved under Title 23 or chapter 53 of Title 49 to State or Federal implementation plans shall not be required for traffic signal synchronization projects prior to the funding, approval or implementation of such projects. The supporting regional emissions analysis for any conformity determination made with respect to a transportation plan, program, or project shall consider the effect on emissions of any such project funded, approved, or implemented prior to the conformity determination.

(5) Applicability

This subsection shall apply only with respect to--

(A) a nonattainment area and each pollutant for which the area is designated as a nonattainment area; and

(B) an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area and that is required to develop a maintenance plan under section 7505a of this title with respect to the specific pollutant for which the area was designated nonattainment.

(6) Notwithstanding paragraph 5, [FN1] this subsection shall not apply with respect to an area designated nonattainment under section 7407(d)(1) of this title until 1 year after that area is first designated nonattainment for a specific national ambient air quality standard. This paragraph only applies with respect to the national ambient air quality standard for which an area is newly designated nonattainment and does not affect the area's requirements with respect to all other national ambient air quality standards for which the area is designated nonattainment or has been redesignated from nonattainment to attainment with a maintenance plan pursuant to section 7505a of this title (including any pre-existing national ambient air quality standard for a pollutant for which a new or revised standard has been issued).

(7) Conformity horizon for transportation plans

(A) In general

Each conformity determination required under this section for a transportation plan under section 134(i) of Title 23 or section 5303(i) of Title 49 shall require a demonstration of conformity for the period ending on either the final year of the transportation plan, or at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments, the longest of the following periods:

(i) The first 10-year period of any such transportation plan.

(ii) The latest year in the implementation plan applicable to the area that contains a motor vehicle emission budget.

(iii) The year after the completion date of a regionally significant project if the project is included in the

transportation improvement program or the project requires approval before the subsequent conformity determination.

(B) Regional emissions analysis

The conformity determination shall be accompanied by a regional emissions analysis for the last year of the transportation plan and for any year shown to exceed emission budgets by a prior analysis, if such year extends beyond the applicable period as determined under subparagraph (A).

(C) Exception

In any case in which an area has a revision to an implementation plan under section 7505a(b) of this title and the Administrator has found the motor vehicles emissions budgets from that revision to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004), or has approved the revision, the demonstration of conformity at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments, shall be required to extend only through the last year of the implementation plan required under section 7505a(b) of this title.

(D) Effect of election

Any election by a metropolitan planning organization under this paragraph shall continue in effect until the metropolitan planning organization elects otherwise.

(E) Air pollution control agency defined

In this paragraph, the term “air pollution control agency” means an air pollution control agency (as defined in section 7602(b) of this title) that is responsible for developing plans or controlling air pollution within the area covered by a transportation plan.

(8) Substitution of transportation control measures

(A) In general

Transportation control measures that are specified in an implementation plan may be replaced or added to the implementation plan with alternate or additional transportation control measures--

(i) if the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced, as demonstrated with an emissions impact analysis that is consistent with the current methodology used for evaluating the replaced control measure in the implementation plan;

(ii) if the substitute control measures are implemented--

(I) in accordance with a schedule that is consistent with the schedule provided for control measures in the implementation plan; or

(II) if the implementation plan date for implementation of the control measure to be replaced has passed, as soon as practicable after the implementation plan date but not later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

(iii) if the substitute and additional control measures are accompanied with evidence of adequate personnel and funding and authority under State or local law to implement, monitor, and enforce the control measures;

(iv) if the substitute and additional control measures were developed through a collaborative process that included--

(I) participation by representatives of all affected jurisdictions (including local air pollution control agencies, the State air pollution control agency, and State and local transportation agencies);

(II) consultation with the Administrator; and

(III) reasonable public notice and opportunity for comment; and

(v) if the metropolitan planning organization, State air pollution control agency, and the Administrator concur with the equivalency of the substitute or additional control measures.

(B) Adoption

(i) Concurrence by the metropolitan planning organization, State air pollution control agency and the Administrator as required by subparagraph (A)(v) shall constitute adoption of the substitute or additional control measures so long as the requirements of subparagraphs (A)(i), (A)(ii), (A)(iii) and (A)(iv) are met.

(ii) Once adopted, the substitute or additional control measures become, by operation of law, part of the State implementation plan and become federally enforceable.

(iii) Within 90 days of its concurrence under subparagraph (A)(v), the State air pollution control agency shall submit the substitute or additional control measure to the Administrator for incorporation in the codification of the applicable implementation plan. Nothwithstanding [FN2] any other provision of this chapter, no additional State process shall be necessary to support such revision to the applicable plan.

(C) No requirement for express permission

The substitution or addition of a transportation control measure in accordance with this paragraph and the

funding or approval of such a control measure shall not be contingent on the existence of any provision in the applicable implementation plan that expressly permits such a substitution or addition.

(D) No requirement for new conformity determination

The substitution or addition of a transportation control measure in accordance with this paragraph shall not require--

(i) a new conformity determination for the transportation plan; or

(ii) a revision of the implementation plan.

(E) Continuation of control measure being replaced

A control measure that is being replaced by a substitute control measure under this paragraph shall remain in effect until the substitute control measure is adopted by the State pursuant to subparagraph (B).

(F) Effect of adoption

Adoption of a substitute control measure shall constitute rescission of the previously applicable control measure.

(9) Lapse of conformity

If a conformity determination required under this subsection for a transportation plan under section 134(i) of Title 23, or section 5303(i) of Title 49, or a transportation improvement program under section 134(j) of such title 23 or under section 5303(j) of such title 49 is not made by the applicable deadline and such failure is not corrected by additional measures to either reduce motor vehicle emissions sufficient to demonstrate compliance with the requirements of this subsection within 12 months after such deadline or other measures sufficient to correct such failures, the transportation plan shall lapse.

(10) Lapse

In this subsection, the term “lapse” means that the conformity determination for a transportation plan or transportation improvement program has expired, and thus there is no currently conforming transportation plan or transportation improvement program.

(d) Priority of achieving and maintaining national primary ambient air quality standards

Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the imple-

mentation of those portions of plans prepared under this section to achieve and maintain the national primary ambient air-quality standard. This paragraph extends to, but is not limited to, authority exercised under the Urban Mass Transportation Act, Title 23, and the Housing and Urban Development Act.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 176, as added Aug. 7, 1977, Pub.L. 95-95, Title I, § 129(b), 91 Stat. 749, and amended Nov. 16, 1977, Pub.L. 95-190, § 14(a)(59), 91 Stat. 1403; Nov. 15, 1990, Pub.L. 101-549, Title I, §§ 101(f), 110(4), 104 Stat. 2409, 2470; Nov. 28, 1995, Pub.L. 104-59, Title III, § 305(b), 109 Stat. 580; Oct. 9, 1996, Pub.L. 104-260, § 1, 110 Stat. 3175; Oct. 27, 2000, Pub.L. 106-377, § 1(a)(1) [Title III], 114 Stat. 1441, 1441A-44; Aug. 10, 2005, Pub.L. 109-59, Title VI, § 6011(a) to (f), 119 Stat. 1878.)

[FN1] So in original. Probably should be “paragraph (5),”.

[FN2] So in original. Probably should be “Notwithstanding”.

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Subchapter I. Programs and Activities
Part D. Plan Requirements for Nonattainment Areas
Subpart 1. Nonattainment Areas in General (Refs & Annos)
§ 7509. 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 7410(k)(5) of this title), if the Administrator--

(1) finds that a State has failed, for an area designated nonattainment under section 7407(d) of this title, to submit a plan, or to submit 1 or more of the elements (as determined by the Administrator) required by the provisions of this chapter 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 7410(k) of this title,

(2) disapproves a submission under section 7410(k) of this title, for an area designated nonattainment under section 7407 of this title, based on the submission's failure to meet one or more of the elements required by the provisions of this chapter applicable to such an area,

(3)(A) determines that a State has failed to make any submission as may be required under this chapter, other than one described under paragraph (1) or (2), including an adequate maintenance plan, or has failed to make any submission, as may be required under this chapter, other than one described under paragraph (1) or (2), that satisfies the minimum criteria established in relation to such submission under section 7410(k)(1)(A) of this title, or

(B) disapproves in whole or in part a submission described under subparagraph (A), or

(4) finds that any requirement of an approved plan (or approved part of a plan) is not being implemented,

unless such deficiency has been corrected within 18 months after the finding, disapproval, or determination referred to in paragraphs (1), (2), (3), and (4), one of the sanctions referred to in subsection (b) of this section shall apply, as selected by the Administrator, until the Administrator determines that the State has come into compliance, except that if the Administrator finds a lack of good faith, sanctions under both paragraph (1) and para-

graph (2) of subsection (b) of this section shall apply until the Administrator determines that the State has come into compliance. If the Administrator has selected one of such sanctions and the deficiency has not been corrected within 6 months thereafter, sanctions under both paragraph (1) and paragraph (2) of subsection (b) of this section shall apply until the Administrator determines that the State has come into compliance. In addition to any other sanction applicable as provided in this section, the Administrator may withhold all or part of the grants for support of air pollution planning and control programs that the Administrator may award under section 7405 of this title.

(b) Sanctions

The sanctions available to the Administrator as provided in subsection (a) of this section are as follows:

(1) Highway sanctions

(A) The Administrator may impose a prohibition, applicable to a nonattainment area, on the approval by the Secretary of Transportation of any projects or the awarding by the Secretary of any grants, under Title 23 other than projects or grants for safety where the Secretary determines, based on accident or other appropriate data submitted by the State, that the principal purpose of the project is an improvement in safety to resolve a demonstrated safety problem and likely will result in a significant reduction in, or avoidance of, accidents. Such prohibition shall become effective upon the selection by the Administrator of this sanction.

(B) In addition to safety, projects or grants that may be approved by the Secretary, notwithstanding the prohibition in subparagraph (A), are the following--

(i) capital programs for public transit;

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

(iii) planning for requirements for employers to reduce employee work-trip-related vehicle emissions;

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

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

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

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

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

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

(2) Offsets

In applying the emissions offset requirements of section 7503 of this title to new or modified sources or emissions units for which a permit is required under this part, the ratio of emission reductions to increased emissions shall be at least 2 to 1.

(c) Notice of failure to attain

(1) As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.

(2) Upon making the determination under paragraph (1), the Administrator shall publish a notice in the Federal Register containing such determination and identifying each area that the Administrator has determined to have failed to attain. The Administrator may revise or supplement such determination at any time based on more complete information or analysis concerning the area's air quality as of the attainment date.

(d) Consequences for failure to attain

(1) Within 1 year after the Administrator publishes the notice under subsection (c)(2) of this section (relating to notice of failure to attain), each State containing a nonattainment area shall submit a revision to the applicable implementation plan meeting the requirements of paragraph (2) of this subsection.

(2) The revision required under paragraph (1) shall meet the requirements of section 7410 of this title and section 7502 of this title. In addition, the revision shall include such additional measures as the Administrator may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any nonair quality and other air quality-related health and environmental impacts.

(3) The attainment date applicable to the revision required under paragraph (1) shall be the same as provided in the provisions of section 7502(a)(2) of this title, except that in applying such provisions the phrase “from the date of the notice under section 7509(c)(2) of this title” shall be substituted for the phrase “from the date such

area was designated nonattainment under section 7407(d) of this title" and for the phrase "from the date of designation as nonattainment".

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 179, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 102(g), 104 Stat. 2420.)

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Subchapter I. Programs and Activities
Part D. Plan Requirements for Nonattainment Areas
Subpart 2. Additional Provisions for Ozone Nonattainment Areas (Refs & Annos)
§ 7511. Classifications and attainment dates

(a) Classification and attainment dates for 1989 nonattainment areas

(1) Each area designated nonattainment for ozone pursuant to section 7407(d) of this title 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 November 15, 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 [FN*]	Primary standard attainment date [FN**]
Marginal	0.121 up to 0.138	3 years after November 15, 1990
Moderate	0.138 up to 0.160	6 years after November 15, 1990
Serious	0.160 up to 0.180	9 years after November 15, 1990
Severe	0.180 up to 0.280	15 years after November 15, 1990
Extreme	0.280 and above	20 years after November 15, 1990

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

[FN**] The primary standard attainment date is measured from November 15, 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 November 15, 1990.

(3) At the time of publication of the notice under section 7407(d)(4) of this title (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 7502(a)(1)(B) of this title (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 7407(d)(4) of this title, and that is subsequently redesignated to nonattainment for ozone under section 7407(d)(3) of this title, shall, at the time of the redesignation, be classified by operation of law in accordance with table 1 under subsection (a) of this section. Upon its classification, the area shall be subject to the same requirements under section 7410 of this title, subpart 1 of this part, and this subpart that would have applied had the area been so classified at the time of the notice under subsection (a)(3) of this section, 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 November 15, 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 nonattain-

ment 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) of this section 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) of this section 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 7511d of this title shall apply within the area, the percent reduction requirements of section 7511a(c)(2)(B) and (C) of this title (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.

(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 7511a(g) of this title, the new source review requirements applicable under this subpart in Extreme Areas shall apply in the area and the term [FN1] “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 November 15, 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 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 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.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 181, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 103, 104 Stat. 2423.)

[FN1] So in original. Probably should be “terms”.

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Subpart 2. Additional Provisions for Ozone Nonattainment Areas (Refs & Annos)

§ 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 November 15, 1990.

(1) Inventory

Within 2 years after November 15, 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 7502(c)(3) of this title, 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 7511(a) of this title, 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 7502(b) of this title (as in effect immediately before November 15, 1990), as interpreted in guidance issued by the Administrator under section 7408 of this title before November 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 7502(b)(11)(B) of this title (as in effect immediately before November 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 November 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) as interpreted in guidance of the Administrator issued pursuant to section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) or the program already included in the plan, whichever is more stringent.

(ii) Within 12 months after November 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 chapter, 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 7521(m)(3) of this title (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 November 15, 1990, the State shall submit a revision that includes each of the following:

(i) Provisions to require permits, in accordance with sections 7502(c)(5) and 7503 of this title, 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 7502(b)(6) of this title (as in effect immediately before November 15, 1990), as interpreted in regulations of the Administrator promulgated as of November 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) of this section.

(B) Emissions statements

(i) Within 2 years after November 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 November 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 [FN1] (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, 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 7502(c)(9) of this title (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) of this section (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 November 15, 1990, the State shall submit a revision to the applicable im-

plementation plan to provide for volatile organic compound emission reductions, within 6 years after November 15, 1990, of at least 15 percent from baseline emissions, accounting for any growth in emissions after 1990. 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 chapter. 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) of this section 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 7602 of this title) 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 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 November 15, 1990, from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under subchapter V of this chapter.

(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 November 15, 1990, or required to be promulgated under section 7545(h) of this title.

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

(iv) Measures required under subsection (a)(2)(B) of this section to be submitted immediately after November 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 7502(c)(1) of this title 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 November 15, 1990, and the date of attainment.

(B) All VOC sources in the area covered by any CTG issued before November 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 November 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 November 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 7625-1 [FN2] of this title).

(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 November 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 November 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) of this section (without regard to whether or not the area was required by section 7502(b)(11)(B) of this title (as in effect immediately before November 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 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) of this section (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 7602 of this title) 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 November 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 November 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) of this section equal to the following amount averaged over each consecutive 3-year period beginning 6 years after November 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 subsection (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) of this section (concerning creditability of reductions). The reductions creditable for the period beginning 6 years after November 15, 1990, shall include reductions that occurred before such period, computed in accordance with subsection (b)(1) of this section, that exceed the 15-percent amount of reductions required under subsection (b)(1)(A) of this section.

(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) of this section), 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 November 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 November 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 November 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 7521 of this title; 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 7541(b) of this title 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 subchapter V of this chapter).

(iv) Enforcement through denial of vehicle registration (except for any program in operation before November 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 chapter, 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 November 15, 1990, a revision to the applicable implementation plan for each area described under part C of subchapter II of this chapter 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 subchapter II of this chapter, including all measures necessary to make the use of clean alternative fuels in clean-fuel vehicles (as defined in part C of subchapter II of this chapter) 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 subchapter II of this chapter.

(B) The Administrator shall approve, as a substitute for all or a portion of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter, 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 subchapter II of this chapter, 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 chapter for the area. Any State seeking approval of such revision must submit the revision to the Administrator within 24 months of November 15, 1990. The Administrator shall approve or disapprove any such revision within 30 months of November 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 (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 7509 of this title, 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 7509 of this title, 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 subchapter II of this chapter.

(5) Transportation control

(A) **[FN3]** Beginning 6 years after November 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 7408(f) of this title 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 7408(e) of this title and with the requirements of section 7504(b) of this title 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 chapter 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 7411(a)(4) of this title) 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 7502(c)(5) of this title and section 7503(a) of this title, 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 7503(a)(2) of this title in the case of any such modification, the best available control technology (BACT), as defined in section 7479 of this title, 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 7411(a)(4) of this title) 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 7502(c)(5) of this title and section 7503(a) of this title, 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 7503(a)(2) of this title (concerning the lowest achievable emission rate (LAER)) shall not apply.

(9) Contingency provisions

In addition to the contingency provisions required under section 7502(c)(9) of this title, 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, 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) of this section, 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) of this section (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 7602 of this title) 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 November 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, to comply with the requirements of subsection [FN4] (b)(2)(B) and (c)(2)(B) of this section (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 7408(f) of this title, 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 7408(f) of this title 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 December 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, 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 7479(3) of this title) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(3) Enforcement under section 7511d

By December 31, 2000, the State shall submit a plan revision which includes the provisions required under section 7511d of this title.

Any reference to the term “attainment date” in subsection (b) or (c) of this section, 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) of this section (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) of this section (relating to reductions of less than 3 percent), the provisions of paragaphs [FN5] (6), (7) and (8) of subsection (c) of this section (relating to de minimus rule and modification of sources), and the provisions of clause (ii) of subsection (b)(1)(A) of this section (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 (in addition to the sources described in section 7602 of this title) 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, 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 7479(3) of this title) 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 7411(a)(4) of this title) 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 7502(c)(5) of this title and section 7503(a) of this title, except that for purposes of complying with the offset requirement pursuant to section 7503(a)(1) of this title, 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 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 chapter.

(3) Use of clean fuels or advanced control technology

For Extreme Areas, a plan revision shall be submitted within 3 years after November 15, 1990, to require, effective 8 years after November 15, 1990, 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 U.S.C.A. § 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 7410 of this title, 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 November 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 7410 of this title. 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) of this section 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) of this section, 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) of this section.

Any reference to the term “attainment date” in subsection (b), (c), or (d) of this section 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 for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 7602 of this title 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 7511c of this title, if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of ox-

ides 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 7511f of this title.

(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 7511c of this title, 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 7511f of this title 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 7511c of this title. 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 November 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) of this section and the corresponding requirements of subsections (c)(2)(B) and (C), (d), and (e) of this section. 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 re-

duce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 7408(f) of this title.

(B) Within 2 years after November 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 chapter. 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 7511 of this title 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 7511(b)(2) of this title 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 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 this section (relating to plan submissions and requirements for ozone nonattainment areas). If the Administrator makes such finding, the provisions of section 7509 of this title (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.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 182, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 103, 104 Stat. 2426, and amended Dec. 23, 1995, Pub.L. 104-70, § 1, 109 Stat. 773.)

[FN1] So in original. Probably should be "subparagraph".

[FN2] So in original. Probably should be section "7625".

[FN3] So in original. No subpar. (B) has been enacted.

[FN4] So in original. Probably should be “subsections”.

[FN5] So in original. Probably should be “paragraphs”.

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Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter III. General Provisions
§ 7607. Administrative proceedings and judicial review

(a) Administrative subpenas; confidentiality; witnesses

In connection with any determination under section 7410(f) of this title, or for purposes of obtaining information under section 7521(b)(4) or 7545(c)(3) of this title, any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the [FN1] chapter (including but not limited to section 7413, section 7414, section 7420, section 7429, section 7477, section 7524, section 7525, section 7542, section 7603, or section 7606 of this title),, [FN2] 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, 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 chapter, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 7521(c) of this title, or when relevant in any proceeding under this chapter. 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 7412 of this title, any standard of performance or requirement under section 7411 of this title, any standard under section 7521 of this title (other than a standard required to be prescribed under section 7521(b)(1) of this title), any determination under section 7521(b)(5) of this title, any control or prohibition under section 7545 of this title, any standard under section 7571 of this title, any rule issued under section 7413, 7419, or under section 7420 of this title, or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter 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 7410 of this title or section 7411(d) of this title, any order under section 7411(j) of this title, under section 7412 of this title,, [FN2] under section 7419 of this title, or under section 7420 of this title, or his action under section 1857c-10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977) or under regulations thereunder, or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title, or any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I of this chapter) 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 chapter 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 [FN3] 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 7409 of this title,

(B) the promulgation or revision of an implementation plan by the Administrator under section 7410(c) of this title,

(C) the promulgation or revision of any standard of performance under section 7411 of this title, or emission standard or limitation under section 7412(d) of this title, any standard under section 7412(f) of this title, or any regulation under section 7412(g)(1)(D) and (F) of this title, or any regulation under section 7412(m) or (n) of this title,

(D) the promulgation of any requirement for solid waste combustion under section 7429 of this title,

(E) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 7545 of this title,

(F) the promulgation or revision of any aircraft emission standard under section 7571 of this title,

(G) the promulgation or revision of any regulation under subchapter IV-A of this chapter (relating to control of acid deposition),

(H) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 7419 of this title (but not including the granting or denying of any such order),

(I) promulgation or revision of regulations under subchapter VI of this chapter (relating to stratosphere and ozone protection),

(J) promulgation or revision of regulations under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality and protection of visibility),

(K) promulgation or revision of regulations under section 7521 of this title and test procedures for new motor vehicles or engines under section 7525 of this title, and the revision of a standard under section 7521(a)(3) of this title,

(L) promulgation or revision of regulations for noncompliance penalties under section 7420 of this title,

(M) promulgation or revision of any regulations promulgated under section 7541 of this title (relating to warranties and compliance by vehicles in actual use),

(N) action of the Administrator under section 7426 of this title (relating to interstate pollution abatement),

(O) the promulgation or revision of any regulation pertaining to consumer and commercial products under section 7511b(e) of this title,

(P) the promulgation or revision of any regulation pertaining to field citations under section 7413(d)(3) of this title,

(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 subchapter II of this chapter,

(R) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under section 7547 of this title,

(S) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under section 7552 of this title,

(T) the promulgation or revision of any regulation under subchapter IV-A of this chapter (relating to acid deposition),

(U) the promulgation or revision of any regulation under section 7511b(f) of this title 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 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 subsection 553(b) of Title 5.

(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, 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 7409(d) of this title 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) of this section). 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) of this section) 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 August 7, 1977.

(e) Other methods of judicial review not authorized

Nothing in this chapter shall be construed to authorize judicial review of regulations or orders of the Administrator under this chapter, 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 7420 of this title or the administration or enforcement of section 7420 of this title 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 subchapter II of chapter 5 of Title 5, the Administrator in promulgating any regulation under this chapter, 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 [FN4] 7407(d), 7502(a), 7511(a) and (b), and 7512(a) and (b) of this title.

CREDIT(S)

(July 14, 1955, c. 360, Title III, § 307, as added Dec. 31, 1970, Pub.L. 91-604, § 12(a), 84 Stat. 1707, and amended Nov. 18, 1971, Pub.L. 92-157, Title III, § 302(a), 85 Stat. 464; June 22, 1974, Pub.L. 93-319, § 6(c), 88 Stat. 259; Aug. 7, 1977, Pub.L. 95-95, Title III, §§ 303(d), 305(a), (c), (f)-(h), 91 Stat. 772, 776, 777; Nov. 16, 1977, Pub.L. 95-190, § 14(a)(79), (80), 91 Stat. 1404; Nov. 15, 1990, Pub.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,

2681-2684.)

[FN1] So in original. Probably should be “this”.

[FN2] So in original.

[FN3] So in original. The word “to” probably should not appear.

[FN4] So in original. Probably should be “sections”.

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END OF DOCUMENT

C

Effective:[See Text Amendments]

Code of Federal Regulations Currentness
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 52. Approval and Promulgation of Implementation Plans (Refs & Annos)
Subpart A. General Provisions (Refs & Annos)

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

(a) Purpose. The purpose of this section is to implement 42 U.S.C. 7509(a) of the Act, with respect to the sequence in which sanctions will automatically apply under 42 U.S.C. 7509(b), following a finding made by the Administrator pursuant to 42 U.S.C. 7509(a).

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

(1) 1990 Amendments means the 1990 Amendments to the Clean Air Act (Pub.L. No. 101-549, 104 Stat. 2399).

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

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

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

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

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

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

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

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

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

(c) Applicability

This section shall apply to any State in which an affected area is located and for which the Administrator has made one of the following findings, with respect to any part D SIP or SIP revision required under the Act:

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

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

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

(ii) A disapproval in whole or in part of a submission described under paragraph (c)(3)(i) of this section; or

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

(d) Sanction Application Sequencing

(1) To implement 42 U.S.C. 7509(a), the offset sanction under paragraph (e)(1) of this section shall apply in an affected area 18 months from the date when the Administrator makes a finding under paragraph (c) of this section unless the Administrator affirmatively determines that the deficiency forming the basis of the finding has been corrected. To further implement 42 U.S.C. 7509(a), the highway sanction under paragraph (e)(2) of this section shall apply in an affected area 6 months from the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator affirmatively determines that the deficiency forming the basis of the finding has been corrected. For the findings under paragraphs (c)(2), (c)(3)(ii), and (c)(4) of this section, the date of the finding shall be the effective date as defined in the final action triggering the sanctions clock.

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

sanctions clock. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected.

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

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

(3)(i) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following the findings under paragraphs (c)(2) and (c)(3)(ii) of this section, if the State has submitted a revised plan to correct the deficiency prompting the finding and the Administrator, prior to 18 months from the finding, has conditionally-approved the revised plan and has issued an interim final determination that the revised plan corrects the deficiency prompting the finding, application of the offset sanction under paragraph (e)(1) of this section shall be deferred unless and until the conditional approval converts to a disapproval or the Administrator proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill the commitment in the conditionally-approved plan. If the conditional approval so becomes a disapproval or the Administrator issues such a

proposed or final disapproval, the offset sanction under paragraph (e)(1) of this section shall apply in the affected area on the later of the date the approval becomes a disapproval or the Administrator issues such a proposed or final disapproval, whichever is applicable, or 18 months following the finding that started the sanctions clock. The highway sanction under paragraph (e)(2) of this section shall apply in the affected area 6 months after the date the offset sanction under paragraph (e)(1) of this section applies, unless the Administrator determines that the deficiency forming the basis of the finding has been corrected.

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

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

(4)(i) Notwithstanding paragraph (d)(1) of this

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

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

(iii) Notwithstanding paragraph (d)(1) of this section, to further implement 42 U.S.C. 7509(a), following findings under paragraph (c)(4) of this section, if after 24 months from the finding the Administrator has proposed to find that the State is implementing the approved plan and has issued an interim final determination that the deficiency prompting the finding has been corrected, application of the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall be stayed unless and until the Administrator preliminarily or finally determines, through a proposed or final finding, that the State is not implementing the approved plan, and that, therefore, the State has not corrected the deficiency. If the Administrator so preliminarily or finally determines

that the State has not corrected the deficiency, the offset sanction under paragraph (e)(1) of this section and the highway sanction under paragraph (e)(2) of this section shall reapply in the affected area on the date the Administrator proposes to take action or takes final action to find that the finding of nonimplementation has not been corrected.

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

(6) Notwithstanding paragraph (d)(1) of this section, nothing in this section will prohibit the Administrator from determining through notice-and-comment rulemaking that in specific circumstances the highway sanction, rather than the offset sanction, shall apply 18 months after the Administrator makes one of the findings under paragraph (c) of this section, and that the offset sanction, rather than the highway sanction, shall apply 6 months from the date the highway sanction applies.

(e) Available Sanctions and Method for Implementation

(1) Offset sanction.

(i) As further set forth in paragraphs (e)(1)(ii)-(e)(1)(vi) of this section, the State shall apply the emissions offset requirement in the timeframe prescribed under paragraph (d) of this section on those affected areas subject under paragraph (d) of this section to the offset sanction. The State shall apply the emission offset requirements in accordance with 42 U.S.C. 7503 and 7509(b)(2), at a ratio of at least two units of emission reductions for each unit of increased emissions of the pollutant(s) and its (their) precursors for which the finding(s) under paragraph (c) of this section is (are) made. If the deficiency prompting the finding under paragraph (c) of this section is not specific to one or more particular pollutants and their precursors, the 2-to-1 ratio shall apply to all pollutants (and their precursors) for which an affected area within the State listed in paragraph (e)(1)(i) of this section is required to meet the offset requirements of 42 U.S.C. 7503.

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

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

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

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

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

[59 FR 39859, Aug. 4, 1994]

SOURCE: 57 FR 27936, 27939, 27942; 37 FR 10846, May 31, 1972; 50 FR 31369, Aug. 2, 1985; 57 FR 32336, July 21, 1992; 57 FR 37104, Aug. 18, 1992; 58 FR 6606, Feb. 1, 1993; 58 FR 38883, July 20, 1993; 59 FR 39859, Aug. 4, 1994; 62 FR 8328, Feb. 24, 1997, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401 et seq.

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Code of Federal Regulations Currentness
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 93. Determining Conformity of Federal Actions to State or Federal Implementation Plans (Refs & Annos)
Subpart A. ConfOrmity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (Refs & Annos)

§ 93.101 Definitions.

Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

1-hour ozone NAAQS means the 1-hour ozone national ambient air quality standard codified at 40 CFR 50.9.

8-hour ozone NAAQS means the 8-hour ozone national ambient air quality standard codified at 40 CFR 50.10.

Applicable implementation plan is defined in section 302(q) of the CAA and 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 the CAA.

CAA means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

Cause or contribute to a new violation for a project means:

(1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

(2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Clean data means air quality monitoring data determined by EPA to meet the requirements of 40 CFR part 58 that indicate attainment of the national ambient air quality standard.

Control strategy implementation plan revision is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

Control strategy implementation plan revision is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy CAA sections 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A), and 189(d); sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provision requiring a demonstration of reasonable further progress or attainment).

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

DOT means the United States Department of Transportation.

Donut areas are geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

FHWA/FTA project, for the purpose of this subpart, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

Forecast period with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

FTA means the Federal Transit Administration of DOT.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system according to § 93.106.

Hot-spot analysis is an estimation of likely future localized CO, PM_{10}, and/or $PM_{2.5}$ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural

areas do not have Federally required metropolitan transportation plans or TIPs and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas.

Lapse means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

Limited maintenance plan is a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

Maintenance plan means an implementation plan under section 175A of the CAA, as amended.

Metropolitan planning organization (MPO) means the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

Milestone has the meaning given in sections 182(g)(1) and 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Milestone has the meaning given in CAA sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM_{10} nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the CAA.

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

NEPA process completion, for the purposes of this subpart, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Project means a highway project or transit project.

Protective finding means a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

Recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

Safety margin means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance.

Standard means a national ambient air quality standard.

Transit is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA section 176(c)(8), that is either one of the types listed in CAA section 108, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

Transportation improvement program (TIP) means a transportation improvement program developed by a metropolitan planning organization under 23 U.S.C. 134(j).

Transportation plan means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

Transportation project is a highway project or a transit project.

Written commitment for the purposes of this subpart means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

[69 FR 40072, July 1, 2004; 71 FR 12510, March 10, 2006; 73 FR 4439, Jan. 24, 2008]

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END OF DOCUMENT

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Code of Federal Regulations Currentness
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 93. Determining Conformity of Federal Actions to State or Federal Implementation Plans (Refs & Annos)
Subpart A. ConfOrmity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (Refs & Annos)

§ 93.118 Criteria and procedures: Motor vehicle emissions budget.

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in § 93.109(c) through (l). This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in paragraph (c) of this section are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the attainment year (if it is within the timeframe of the transportation plan and conformity determination), for the last year of the timeframe of the conformity determination (as described under § 93.106(d)), and for any intermediate years within the timeframe of the conformity determination as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

(1) Until a maintenance plan is submitted:

(i) Emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and

(ii) Emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year. For example, emissions in years after the attainment year for which the implementation plan does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) When a maintenance plan has been submitted:

(i) Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or

contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by § 93.105 shall determine what must be considered in order to make such a finding;

(ii) For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan;

(iii) If an approved and/or submitted control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years; and

(iv) For any analysis years before the last year of the maintenance plan, emissions must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.

(c) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in § 93.102(b) for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

(d) Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of §§ 93.122 and 93.105(c)(1)(i).

(2) The regional emissions analysis may be performed for any years in the timeframe of the conformity determination (as described under § 93.106(d)) provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan and conformity determination) and the last year of the timeframe of the conformity determination. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in paragraph (b) of this section, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(3) When the timeframe of the conformity determination is shortened under § 93.106(d)(2), the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan, and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year extends beyond the timeframe of the conformity determination).

(e) Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans.

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance

plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, and the adequacy finding is effective. However, motor vehicle emissions budgets in submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.

(2) If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previously approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the interim emissions tests required by § 93.119 must be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes after EPA had previously found the budget(s) adequate, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy §§ 93.114 and 93.115, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(i) The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a State public hearing;

(ii) Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, State, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

(iii) The motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(iv) The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);

(v) The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(vi) Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see § 93.101 for definition); and reas-

ons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA will review the State's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA will document its consideration of such comments and responses in a letter to the State indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations will be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

(f) Adequacy review process for implementation plan submissions. EPA will use the procedure listed in paragraph (f)(1) or (f)(2) of this section to review the adequacy of an implementation plan submission:

(1) When EPA reviews the adequacy of an implementation plan submission prior to EPA's final action on the implementation plan,

(i) EPA will notify the public through EPA's website when EPA receives an implementation plan submission that will be reviewed for adequacy.

(ii) The public will have a minimum of 30 days to comment on the adequacy of the implementation plan submission. If the complete implementation plan is not accessible electronically through the internet and a copy is requested within 15 days of the date of the website notice, the comment period will be extended for 30 days from the date that a copy of the implementation plan is mailed.

(iii) After the public comment period closes, EPA will inform the State in writing whether EPA has found the submission adequate or inadequate for use in transportation conformity, including response to any comments submitted directly and review of comments submitted through the State process, or EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under paragraph (f)(2)(iii) of this section.

(iv) EPA will publish a Federal Register notice to inform the public of EPA's finding. If EPA finds the submission adequate, the effective date of this finding will be 15 days from the date the notice is published as established in the Federal Register notice, unless EPA is taking a final approval action on the SIP as described in paragraph (f)(2)(iii) of this section.

(v) EPA will announce whether the implementation plan submission is adequate or inadequate for use in transportation conformity on EPA's website. The website will also include EPA's response to comments if any comments were received during the public comment period.

(vi) If after EPA has found a submission adequate, EPA has cause to reconsider this finding, EPA will repeat actions described in paragraphs (f)(1)(i) through (v) or (f)(2) of this section unless EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission. In all cases where EPA reverses its previous finding to a finding of inadequacy under paragraph (f)(1) of this section, such a finding will become effective immediately upon the date of EPA's letter to the State.

(vii) If after EPA has found a submission inadequate, EPA has cause to reconsider the adequacy of that budget, EPA will repeat actions described in paragraphs (f)(1)(i) through (v) or (f)(2) of this section.

(2) When EPA reviews the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan,

(i) EPA's Federal Register notice of proposed or direct final rulemaking will serve to notify the public that EPA will be reviewing the implementation plan submission for adequacy.

(ii) The publication of the notice of proposed rulemaking will start a public comment period of at least 30 days.

(iii) EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in EPA's final rulemaking or through the process described in paragraphs (f)(1)(iii) through (v) of this section. If EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication date of EPA's approval in the Federal Register, or upon the effective date of EPA's approval if such action is conducted through direct final rulemaking. EPA will respond to comments received directly and review comments submitted through the State process and include the response to comments in the applicable docket.

[69 FR 40078, July 1, 2004; 73 FR 4440, Jan. 24, 2008]

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TOGETHER WITH

A SECTION-BY-SECTION INDEX

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CLEAN AIR ACT AMENDMENTS OF 1990
CHAFEE-BAUCUS STATEMENT OF SENATE MANAGERS

Mr. President, the conference report that is before us includes some 800 pages of legislative language and less than 40 pages--double spaced--of explanatory text. Due to time constraints, we do not have a particularly useful statement of managers.

To help rectify this problem, we have prepared a detailed explanation of five important titles. The explanation is in the form of a traditional statement of managers. It has not been reviewed or approved by all of the conferees but it is our best effort to provide the agency and the courts with the guidance that they will need in the course of implementing and interpreting this complex act.

The titles covered by the "Chafee-Baucus Statement of Senate Managers" are: title I on nonattainment; title II on mobile sources; title V on permits; title VI on stratospheric ozone; and title VII on enforcement.

Mr. President, I ask unanimous consent that this document be printed in the Record.

There being no objection, the material was ordered to be printed on the Record, as follows:

CHAFEE-BAUCUS STATEMENT OF SENATE MANAGERS, S. 1630, THE CLEAN AIR ACT AMENDMENTS OF 1990

Title I--Provisions for Attainment and Maintenance of National Ambient Air Quality Standards.
Title II--Mobile Sources.
Title V--Permits.
Title VI--Stratospheric Ozone Protection.
Title VII--Enforcement.

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

SECTION 101--GENERAL PLANNING REQUIREMENTS

Senate bill. In sections 101 and 104 the Senate bill amends the Clean Air Act with respect to processes for designating areas of the country based on air quality and with respect to requirements for preparation, contents, submittal, and review of State implementation plans.

In section 106 the Senate bill amends section 176(c) of the Clean Air Act which requires conformity of Federal activities and federally funded activities with the State implementation plan.

House amendment. In section 101 the House bill amends the Clean Air Act to establish a somewhat different structure from existing law for State and EPA action following promulgation of new or revised national ambient air quality standards, including procedures for designating areas based on air quality and for preparation, submittal and review of State implementation plans.

Section 101 also contains an amendment to section 176(c) of the Clean Air Act. The amendment clarifies and expands the requirements applicable to determinations of the conformity of Federal and federally funded activities with the applicable implementation plan.

Conference agreement. The Senate concurs in the House amendment except as follows:

(1) The House concurs in the Senate provision (section 105 in the Senate bill) to amend section 118 of the Clean Air Act to clarify that Federal facilities are subject to any State or local agency requirement to pay a fee or charge to defray the costs of the agency's air pollution regulatory program.

(2) The House concurs in the Senate provision amending section 176(c) of the Clean Air Act with changes as follows:

The conference agreement clarifies that individual transportation projects that come from a conforming transportation plan and program may be found to conform to a SIP if the design concept and scope of the project have not changed significantly since the conformity finding for the plan and program and if the definition of the project at the time of the conformity findings for the plan and program was sufficiently detailed to permit a determination of emissions for comparison to projected emissions at the time the project is being adopted or approved. In addition, projects that are not part of a conforming plan and program may be treated as conforming if the projected emissions, when considered together with emissions projected for a conforming plan and program for the area in which the project is located, do not cause the plan or program to exceed the emission reduction projections in the applicable SIP. Of course, if a project is not part of a transportation plan or program, but the plan or program is revised to take emissions from the project into account, and the plan and program as revised conform to the SIP, the project may be approved.

The conference agreement adds language to allow for conformity determinations during the transition period before a revised State implementation plan is approved.

The process for the issuance of criteria and procedures by the Administrator is modified to require concurrence by the Secretary of Transportation and to assure that a citizen suit may be brought against the Administrator and the Secretary to compel promulgation of the criteria and procedures.

SEC. 102–GENERAL PROVISIONS FOR NONATTAINMENT AREAS

Senate bill. In section 106 the Seuate bill amends subpart D of title I of the Clean Air Act with respect to generic provisions for nonattainment areas, including requirements for attainment dates, State implementation plan conteuts and review, operating permits, fees for emissions, sanctions, and maintenance plans.

Section 106(g) of the Senate bill requires EPA and the Department of Transportation to analyze State and local air quality-related transportation programs and submit a report to Congress in 1992 and every three years thereafter ou the results of the analysis together with recommendations for improving the programs.

House amendment. The House amendment in section 102 amends subpart D of title I of the Clean Air Act, establishing generic authority and requirements for nonattainment areas with respect to attainment dates and classification of areas based on the severity of the pollution problem; schedules for, and contents and review of, State implementation plans; interstate transport commissions; sanctions; and Federal implementation plans.

Conference substitute. The Senate concurs in the House amendment except in the following respects:

(1) Senate section 106(g) is included but modified by changing the date for the first report to Congress from 1992 to 1993 and by requiring in reports after the first that the Secretary of Transportation describe what actions have been taken to follow up on the recommendations of the preceding report.

(2) The sanctions provisions are a combination of provisions in both the House and Senate bills. The Administrator is required to impose sanctions as in the House bill, and the sanctions available are the requirement for offsets of emissions at a 2 to 1 ratio, as in the house bill, and a limitation of the types of projects for which Federal highway funds may be spent to a specified list. The list is as contained in the Senate bill with two deletions. In addition, the Senate provision restricting the use of funds to safety projects funded by specified programs under title 23, United States Code, is deleted and language substituted restricting funding to projects "the principal purpose of which is an improvement in safety". While the principal purpose of the project must be to improve safety, the project may also have other important benefits.

The Federal implementation plan required by section 110(c) of the Clean Air Act is to provide for attainment and maintenance of national ambient air quality standards, except that were a State planning failure does not relate to a failure to demonstrate attainment with the ambient standards, the Federal plan may be limited to the correction of the relevant failure.

New section 173(e) of the Clean Air Act directs States to allow emissions from existing and modified sources that test rocket engines and motors to be offset by alternative or innovative means. The provision requires that, to be eligible for an offset, the source must obtain a written finding from the Department of Defense, the Department of Transportation, the National Aeronautics and Space Administration, or another appropriate agency, that the testing of rocket motors or engines is essential to the national security. The required finding is not limited to military or government launch programs; the appropriate Federal agency may also find that testing required for a civilian or commercial launch program is essential to the national security.

SECTION 103–ADDITIONAL PROVISIONS FOR OZONE NONATTAINMENT AREAS

Senate bill. Section 107 of the Senate bill provides for the classification of ozone nonattainment areas as moderate, serious, severe, and extreme based on the severity of ozone pollution, deadlines for attaining the primary ambient air quality standard for ozone, requirements applicable to ozone nonattainment areas based on their classification, and consequences for failure to comply with requirements or meet deadlines.

The section also contains requirements for the Administrator to issue Federal regulations and guidelines for certain products, stationary sources and the loading and unloading of petroleum from vessels, and sets a deadline for the Administrator to promulgate emissions standards for hazardous waste treatment facilities (TSDFs) under the Solid Waste Disposal Act. Section 107 also establishes a northeast ozone transport region consisting of 12 States and the District of Columbia.

House bill. Section 103 of the House amendment is similar in structure and content to the Senate bill, but contains a different breakdown for classification of areas as marginal, moderate, serious, severe, and extreme, variations on the requirements applicable to each classification, different approaches to direct Federal regulation of certain sources, including a directive that the Administrator consider TSDFs in determining for which categories to establish a control technique guideline, and a northeast transport region consisting of 11 States and the District of Columbia.

Conference agreement. The Senate recedes to the House except as follows:

(1) With respect to transportation controls required in serious areas (new section 182(b)(5) of the Clean Air Act), language from the Senate bill is adopted to describe the measures that must be included in a SIP and to require the States assure adequate access to areas in the nonattainment area when adopting transportation controls.

(2) With respect to transportation controls in severe and extreme areas (new section 182(d)(1) of the Clean Air Act), the House recedes to the Senate, except that with respect to the provisions requiring employers of more than 100 employees in a nonattainment area to institute programs to increase average vehicle occupancy on commuting trips, i.e., trips between home and the workplace (new section 182(d)(1)(B) of the Clean Air Act), the conference agreement drops the provision that specifies that employers may demonstrate compliance with the requirement by spending as much on the required program as on parking subsidies for employees. In calculating average vehicle occupancy rates, an employer is not required to include in the calculation or in a compliance plan employees who do not travel regularly to the same workplace.

(3) With respect to control of emissions of oxides of nitrogen (NO_x), the conference agreement adds authority for the Administrator to limit the application of VOC control requirements to NO_x sources if the result would be "excess reductions in emissions of NO_x". The agreement permits a person to petition the Administrator at any time after the completion of the study of VOC and NO_x emissions required by new section 185B of the Clean Air Act, for a determination to limit the applicability of requirements for NO_x controls, either because excess reductions would result or because net air quality benefits are greater in the absence of reductions of NO_x from certain sources.

(4) With respect to regulation of emissions from consumer and commercial products by the Administrator (new section 183(e) of the Clean Air Act), the conference agreement drops the terms "reasonable fees" and "charges" as an elaboration of the phrase "economic incentives".

(5) With respect to emissions from vessels, the conference agreement clarifies the types of vessels covered and the role and authority of the Coast Guard in assuring the safety of emissions control systems.

While the conference agreement gives priority to TSDFs for the establishment of a CTG, it does not intend to disrupt nor duplicate the EPA's ongoing efforts to set air emissions standards under section 3004(n) of the Solid Waste Disposal Act, in response to amendments to that Act passed in 1984. Nor does the conference agreement suggest that a lesser level of VOC control is appropriate in any area of the country. To the extent that criteria for CTGs under the Clean Air Act could result in a less stringent level of control than will be imposed under the Solid Waste Disposal Act, the standard for which is "necessary to protect human health and the environment," the Solid Waste Disposal Act standard should govern.

With respect to Federal regulation of consumer and commercial products, new section 183(e) of the Clean Air Act requires the Administrator to regulate categories which account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, in ozone nonattainment areas. Credit toward the 80 percent threshold should be given to emission reductions from any consumer or commercial products made after enactment of the Clean Air Act Amendments of 1990, not solely from products that would otherwise be regulated. Subsection (e)(9) requires consultation with EPA when a State plans to regulate VOC emissions from consumer or commercial products. The provision is intended to create a clearinghouse of information to encourage national uniformity. It does not preempt or otherwise limit the national uniformity. It does not preempt or otherwise limit the authority of States to propose or adopt regulations affecting such products, either before or after EPA adopts regulations.

The conference agreement emphasizes the importance of implementation of reasonably available control technology in all nonattainment areas. The reference in section 182(a)(2) to guidance issued by EPA under section 108 of the Act is intended to cover control techniques guidelines, guidance on the applicability of RACT, and guidance covering the correction of deficiencies in State rules.

Section 182(b)(1)(A) requires ozone nonattainment areas to obtain a 15 percent reduction in VOC emissions within six years of enactment. These reductions are to be calculated from emissions levels in the year of enactment, and growth must be accounted for so that the required reductions from 1990 levels are actually achieved.

SECTION 104—ADDITIONAL PROVISIONS FOR CARBON MONOXIDE NONATTAINMENT AREAS

Senate bill. Section 108 of the Senate bill provides for classification of carbon monoxide (CO) areas as moderate or serious, depending on the severity of CO pollution, deadlines for attaining the primary ambient air quality standard for CO, requirements applicable to nonattainment areas based on their classification, and consequences for failure to comply with requirements or meet applicable deadlines.

House amendment. The House amendment is similar to the Senate bill in structure and content but differs in several specific provisions.

FEDERAL FACILITIES

The federal facilities language of the new legislation is identical to the Senate passed bill. As was stated in the Senate report: "Military installations in California's South Air Quality Management, District have filed suit challenging the District's authority to require payment of fees, including permit fees. Similar suits have been filed in Federal District Court in New York and there have been other challenges to the authority of State or local agencies to impose fees on Federal facilities. The bill clarifies existing law to make explicit what section 118 already requires: Federal facilities are subject to the same fee requirements that are applicable to nongovernmental entities.

Section 118 of the existing Act should have been sufficient to ensure federal compliance with all state and local requirements, including fees or charges to defray the cost of air pollution programs, notwithstanding any immunity under any law or rule of law. Nevertheless, federal agencies in California and elsewhere have argued that the doctrine of sovereign immunity shields them from the obligation to pay these fees or charges, and have asserted that argument in litigation against air pollution control agencies.

The new language is intended to refute that argument and reaffirm the obligation of federal agencies to comply with all requirements, including such fees or charges.

CONTROL TECHNIQUES GUIDELINES FOR TSDFS

The bill also requires the Environmental Protection Agency to issue control techniques guidelines (CTG) for additional categories of sources emitting volatile organic compounds. It directs the Agency to give priority to those categories it considers to make the most significant contribution to ozone levels in nonattainment areas, including hazardous waste treatment, storage and disposal facilities. This specific reference to TSDF's is intended to underscore the importance of the Agency's ongoing work to set air emission standards under section 3004(n) of the Resource Conservation and Recovery Act for these facilities. The Hazardous and Solid Waste Amendments of 1984 directed EPA to promulgate standards for the control of air emissions from TSDFs "as may be necessary to protect human health and the environment."

This directive to EPA is not intended to disrupt these ongoing efforts, be duplicative of them or to suggest that a lesser level of control is appropriate in any area of the country. To the extent that the criteria for CTG's under the Clean Air Act could result in a less stringent level of control than will be proposed under RCRA, the RCRA standards must govern, to reflect the standard of protection of human health and environment by which the adequacy of the RCRA regulations will be measured.

GENERAL TRANSPORTATION CONTROL MEASURES

The experience of the last 20 years makes clear that we cannot solve the air pollution crisis in major polluted areas like the Northeast, Chicago, or Los Angeles only by controlling industrial sources or making new cars cleaner. The existing vehicles on the road account for half or more of the ozone precursors that contribute to health hazards for nearly half

of all Americans in more than 100 cities and 75 percent or more of the carbon monoxide that causes ambient violations in another 50 cities. In addition, we have learned that the growth in vehicle use, nearly three percent per year nationwide, was a major factor in preventing the attainment of the ambient standards by the 1987 deadline.

It is clear that the goals of this bill--a healthy and safe air supply for every American--will not be achieved without implementing strategies that effectively limit the growth in vehicle use in the major urban centers where pollution levels are the worst. The transportation control and planning provisions of the bill are intended to achieve the emission reductions from the use of mobile sources needed to achieve the objectives of the bill.

The transportation control provisions of the bill are designed to correct 20 years of failed efforts to control transportation sources of pollution. The sponsors hope we have learned from the mistakes of the past and have designed a better approach to achieving these objectives.

Transportation control measures are not a new part of the law. Let me take this opportunity to remind my colleagues of the expectations we had for the 1970 Clean Air Act. Senator Muskie explained the 1970 bill to his colleagues as follows:

"We still have existing a mass of used automobiles to deal with. The bill before us deals with that problem by the requirement of national ambient air quality standards geared to help.

"Those standards, realistically applied, will require that urban areas do something about their transportation systems, the movement of used cars, the development of public transportation systems, and the modification and change of housing patterns, employment patterns, and transportation patterns generally. All of that is implicit in the concept of implementation plans for national ambient air quality standards and what they mean for the used cars in our country."

Today we continue to recognize the need to make the kind of changes that the Senator from Maine described in 1970, but we also have learned that such changes are long in coming and not so easily achieved as we once thought. We also have learned that these kids of community decisions are not likely to be made based simply on what seems implicit in the development of implementation plans, more specific planning directives are needed to focus the resources and creativity of communities.

In 1977, Congress added a requirement (Section 172(b)(2)) that each state plan contain all reasonably available control measures to reduce transportation emissions. The Environment and Public Works Committee Report in 1977 (pp. 38-40) explained that EPA was required to analyze various strategies that were then required to be reviewed by the states to determine if they could be included as part of the State Implementation Plan given the local circumstances. This provision was implemented by EPA guidance in 1979 (44 Fed. Reg. 201, 375 (April 4, 1979)), but EPA was not consistent in its application of the guidance, and many areas did not give careful consideration to the various control measures that EPA identified.

The sponsors believe that EPA's initial (1979) guidance for the application of the 1977 Law's requirement to adopt "all reasonably available control measures" in each area was sound. The Ninth Circuit recently reviewed and correctly applied EPA's guidance. The bill (sections 108(f), 172(c)(1)) retains the general planning approach of the 1977 law and

ratifies EPA's guidance as recently construed by the Ninth Circuit in the case involving the Arizona State Implementation Plan. *Delaney v. EPA*, 898 F. 2d. 687 (1990).

The Senate Committee bill, S. 1630, modified the requirements for the adoption of transportation control measures in State Implementation Plans (SIPs). The Committee bill required that identified transportation control measures be incorporated into each implementation plan for severe and extreme ozone, in serious ozone non-attainment areas under certain circumstances, and in serious carbon monoxide non-attainment area unless the state could demonstrate that a measure would not contribute any additional progress toward attainment in the area.

During Senate floor debate, these provisions were modified to require that each listed measure be considered by the state, but the mandatory obligation to incorporate each measure in the absence of a negative determination was removed. The emphasis in the amendment, therefore, was on a state selecting and implementing those measures "necessary to demonstrate attainment with national ambient air quality standards," including, of course, interim reduction requirements. The sponsors' intention in accepting this amendment was to retain current law with regard to the consideration of transportation control measures.

The Committee language in S. 1630 would have eliminated the option of the states to adopt less than all reasonably available control measures even in the circumstances where the states could make the demonstrations allowed by EPA's guidance. In agreeing to the amendment, the sponsors determined that the rigid application of control measures in the Committee bill was too restrictive. The bill (sections 182(c)(5), 182(d)(1) and 182(e)), which adopts the final Senate provisions with respect to transportation control measures for ozone SIPs in addition to the general planning requirements for reasonably available control measures in section 172(c)(1). Taken together, these provisions require the EPA's traditional guidance continues to govern the review of transportation control measures in state plans.

The sponsors believe that if the EPA consistently applies this guidance in the development of SIP revisions required by the bill, significant progress toward the control of mobile source emissions will be achieved. Of course, this bill adds statutory criteria defining "reasonable further progress" in terms of specified emissions reductions. The need for transportation control measures and the appropriateness of various measures should be evaluated with regard to these new interim increments of progress in the bill.

The sponsors intend that EPA expand its list of reasonably available transportation control measures to incorporate all the measures in Section 108(f)(1). In addition, EPA should evaluate and determine whether additional transportation control measures should be added to those identified in the bill.

The "notice" and "comment" provision of section 108(e) is in no way intended to create an APA-type review procedure for EPA; the "guidances" listed in Section 108(f)(1) remain exactly that, not rules subject to review. However, EPA will be expected, as we understand it does now, to published its final guidances and to continue to solicit views, ideas, and comments from state and local officials and other interests as these guidances are being prepared. The bill clarifies that these practices are to continue.

Today, we consume about 825 million gallons of ethanol each year. With the new requirements we are considering today, annual ethanol consumption should triple, I am advised. As additional cities look to clean fuels to attain air quality standards, this demand will be even higher.

Right now, almost all ethanol is produced from corn. If we triple ethanol consumption, we'll use a total of approximately 1 billion bushels of grain per year to meet our energy needs. Using a rule of thumb developed by analysts at the Congressional Research Service, that translates into $1,980 million less in farm program costs and $440 million more in farm income each year.

When given a choice between lowering farm program payments and paying huge sums to defend foreign oil sources, how can we afford not to support this bill?

A substantial portion of our corn harvest is an important food source. As ethanol demand increases, we must support investigation into other crops that hold promise as biofuel feedstocks.

Research at Arkansas State University (ASU), in Jonesboro, AR, may provide a key to this puzzle. At my request, the Appropriations Committee provided $100,000 to ASU in fiscal year 1991 for experimentation on crop substitution and ethanol production from nontraditional crop sources.

With these funds, ASU will explore the potential for making ethanol out of crops easily grown in the Mississippi Delta region, like milo and sorghum.

If such crops prove effective as biofuel feedstocks, our farm program must be flexible enough to provide financial security for producing energy crops. An amendment I introduced that was incorporated into the 1990 farm bill allows farmers to grow feedstocks for ethanol or other biofuels on their flexible crop acreage without decreasing base acreage levels.

Mr. Speaker, we all want to finish np our business here and go home to our constituents. Before we do, we have the opportunity right now to make a real difference in our environment, our health, our agricultural economy, and the price of our military spending.

I urge all of my colleagues to vote "aye" on this bill.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New York (Mr. Manton), who has been very interested in and has worked very hard on this legislation.

(Mr. MANTON asked and was given permission to revise and extend his remarks.)

Mr. MANTON. Mr. Speaker, I rise in strong support of the conference report on S. 1630, the Clean Air Act Amendments of 1990. I want to take this opportunity to commend and congratulate the distinguished chairman of the Energy and Commerce Committee, my good friend from Michigan, for his remarkable and tireless work in bringing this conference report to the floor today. I also want to pay tribute to the gentleman from California (Mr. Waxman), the gentleman from Indiana (Mr. Sharp), and my friend from New York, the ranking minority member of the committee, Mr. Lent, for their diligence and tireless efforts in making the passage of this landmark clean air legislation a reality.

As a new member of the Energy and Commerce Committee, I am deeply honored to have played a role in the long and arduous process of writing the most comprehensive and complex piece of environmental legislation that has ever been considered by this Congress.

Mr. Speaker, Americans deserve clean air. We need dramatic reductions in smog and cancer causing toxic pollutants. The majestic forests and lakes of the northeast deserve protection from the ravages of acid rain. The conference report under consideration today will accomplish these noble goals.

First, the conference report will require cities that are covered by a blanket of smog to take significant new and aggressive steps to limit ozone and carbon monoxide pollution. Second, the conference report will require auto makers to produce new, cleaner cars and to develop fleets and urban buses that operate on clean alternative fuels. Oil companies will be required to develop new, cleaner gasoline. Third, our industries will be required to dramatically reduce emissions of toxic pollutants. Fourth, the bill will reduce the emission of acid rain causing pollutants by 50 percent. Finally, the legislation will phase out the production of chemicals that deplete the Earth's protective ozone layer.

Mr. Speaker, most important, this legislation will create a cleaner environment without imposing undue hardships or unbearable costs on any one industry or any one segment of our society. This, then, is a proposal every Member of the House can be proud of.

Mr. Speaker, once again I want to applaud chairman Dingell and Chairman Waxman for their heroic efforts in crafting this historic measure. This House, and indeed, the Nation owe them a special debt of gratitude. I urge my colleagues to vote for the conference report.

Mr. Speaker, at this time I would like to enter into a brief colloquy with the distinguished chairman of the Committee on Energy and Commerce. As approved by the House, H.R. 3030 amended section 108(f) of the Clean Air Act to require States, in considering transportation control measures, to ensure adequate access to downtown, other commercial and residential areas and avoid measures that increase or relocate emissions and congestion rather than reduce them.

The House report language on section 108(f), and on the specific provisions to offset growth in vehicle miles traveled in severe ozone nonattainment areas, makes it clear this is a requirement on the States in revising their State implementation plans.

Although the conference report deletes that sentence from section 108(f), the conference report requires States to choose from among and implement transportation control measures in a manner that ensures access, and to avoid using counterproductive measures which merely relocate emissions and congestion. As my chairman knows, this language was added as an amendment to section 182(c) of the act for serious ozone, section 182(d) of the act for severe ozone areas, and section 187(b) for serious carbon monoxide areas by cross reference to severe ozone. Is my understanding correct?

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. MANTON. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Speaker, the gentleman from New York (Mr. Manton) is correct. He was the author of that section and understands very well what transpired.

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. Ritter).

(Mr. RITTER asked and was given permission to revise and extend his remarks.)

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Serious Areas. Under new Clean Air Act section 182(c), a State with a serious ozone nonattainment area must meet the same requirements imposed with respect to a moderate area, as well as additional requirements.

For any serious area the term "major source" or "major stationary source" is defined to include 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 VOCs. There are three principal effects of this definitional change: (1) new or modified sources emitting 50 tons or more per year of VOCs will be subject to new source review requirements; (2) existing sources emitting 50 tons or more per year of VOCs will be subject to RACT requirements; and (3) all sources emitting 50 tons or more per year of VOCs, whether new, modified, or existing, will be subject to permit requirements under Title IV.

Additional requirements applying to serious areas include the following:

(1) *Enhanced monitoring.*—SIPS are to be revised to include provisions for improved ambient monitoring of ozone and ozone precursors pursuant to guidance from the Administrator. Within 18 months of enactment the Administrator is directed to promulgate rules for enhanced monitoring of ozone, NO_x, and VOCs.

(2) *Attainment demonstration and reasonable further progress demonstrations.*—The State must submit, within four years of enactment, an attainment demonstration based on photochemical grid modeling or another analytical method determined by the Administrator to be at least as effective.

Section 182(c)(2)(B) requires that each SIP include a demonstration that it will achieve VOC emission reductions of at least three percent per year averaged over each consecutive 3-year period beginning six years after enactment until the attainment date. An emission reduction of less than three percent per year may be accepted under this subparagraph, if the State demonstrates to the satisfaction of the Administrator that the SIP providing for such lesser amount includes all measures that can feasibly be implemented in the area in light of technologically achievability. The term "technological achievability" refers to measures which can be successfully implemented in actual practice, not measures which merely appear feasible in a research setting, for example. To qualify under this test, the State must demonstrate that the SIP for the area includes all measures achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. The term "achieved in practice" is intended to include those measures which have been successfully implemented in nonattainment areas of the next higher category. If such an area is initiating use of an unusual and unproven control measure and the measure is not successfully implemented in practice this measure would not be required under this provision of the bill unless and until it has been proven successful. Any determination to lessen the 3 percent requirement must be reviewed at each 3-year milestone and revised to reflect the availability of any new technologies or other control steps for sources in the same category.

Under either approach, the percentage must be sufficient to achieve attainment by the applicable date. The baseline for the 3

percent per year reductions and the emission reductions creditable toward such reductions are to be the same as those applying for purposes of calculating the 15 percent reduction under section 182(b)(1).

NO_x control.—Section 182(c)(2)(C) directs the Administrator to promulgate within one year guidance concerning conditions under which control of NO_x may be substituted for, or combined with, control of VOCs in order to reach attainment of ozone air pollution. In lieu of the annual VOC reductions required in section 182(c)(2)(B), the SIP revision may instead include a demonstration to the satisfaction of the Administrator that the plan provides for a reduction in NO_x, which, in conjunction with a lower level of reductions of VOCs, would result in a reduction in ozone concentration at least as great as that which would result from the percent reduction in VOC emissions provided for in section 182(c)(2)(B). The same baseline and rules governing creditability of reductions apply to 182(c)(2)(C) as apply to section 182(c)(2)(B). EPA has a year to issue public guidance for States and others providing conditions or examples thereof under which NO_x control may be substituted for VOC control or may be combined with VOC control to maximize reductions in ozone. NO_x reductions may not be substituted for VOC reductions in a manner that delays attainment of the ozone standard or that results in lesser annual reductions in ozone concentration than provided for in the attainment demonstration.

The Committee notes there is no requirement in this section or in H.R. 3030 that expressly would require the use of any technology beyond low NO_x burners except in extreme areas.

(3) *Enhanced vehicle inspection and maintenance program.*—Within two years of enactment, a State is required to implement an enhanced program of motor vehicle inspection and maintenance, in accordance with EPA guidance. The program must meet a performance standard achievable by a program combining emission testing with inspection to detect tampering with emission control devices or misfueling. This program must apply for each urbanized serious ozone nonattainment area with a population of 200,000 or more. The program must include computerized emission analyzers, as well as enforcement through vehicle registration denial unless the State can show that the enforcement provisions of an existing program are more effective in assuring that noncomplying vehicles are not operated in the area. On-road emission testing is to be a part of the emission testing system, but is to be a complement to testing otherwise required since on-road testing is not intended to replace such testing. On-road emission testing may not be practical in every season or for every vehicle, and is not required. However, it should play some role in the State program. It is the Committee's intention that States should take into consideration that the results of on-road emission testing, when used, have not been shown to be consistent with Federal emission testing procedures.

The program is to include annual emission testing unless the State demonstrates to the satisfaction of the Administrator that a biennial inspection, in combination with other features of the program, will be equally or more effective. The program is to include the inspection and, as necessary, maintenance and repair of emis-

sion control diagnostic systems. The program is to be operated on a centralized basis unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective. The Administrator must establish criteria under which decentralized systems may be considered equally effective. In accordance with such criteria, decentralized programs with an electronically connected testing system, a licensing system for decentralized inspection stations, or other measures may be considered acceptable if they are determined to be equally effective. The intent of the Committee is that enhanced inspection and maintenance programs as required under this subsection are to either be centralized, or to include other program elements which taken together allow a decentralized system to be as effective as a centralized system in identifying noncomplying motor vehicles, and causing such vehicles to be repaired.

The program may not allow waivers for any vehicles covered by the emission control performance warranty under section 207(b) or for tampering-related repairs. If waivers are otherwise allowed, the program must require a minimum expenditure of $450 for repairs, to be adjusted periodically for inflation.

In an April 14, 1989 letter to the Committee, EPA said it found that "waiver rates varied considerably" among the state program EPA audited. Typical cost waiver limits found by EPA in I/M programs were $50 or $75. EPA said:

> Unless there was a carefully administered waiver system, waivers tended to be a weakness in all programs that allow them.
>
> To some extent, excessive waivers varied with program design. In programs where the administering agency processes all waiver applications (many centralized programs, a few decentralized), the reason for high waiver rates tended to be lenient requirements. Vehicles receiving improper or poorly-performed repairs were granted waivers as long as the repair cost limit was reached. It is not unusual for retest scores on failed vehicles to remain the same or increase as a result of such repairs. Repair cost limits were often inadequate to ensure that vehicles received the basic repairs needed to bring the vehicle into compliance. In addition, vehicles eligible for warranty coverage could get waivers without ever having sought a free warranty repair and owners of failing vehicles were allowed to do their own repairs and get a waiver if the repairs were inadequate. Repairs done by vehicle owners were often ineffective and, in one program which had data available, about one-third of the waivers were from this group, a disproportionately large percentage. Finally, not all commercial repairs were appropriate for the cause of the I/M failure.

The total I/M program is important because older vehicles are responsible for a disproportionate share of ozone-forming pollution from motor vehicles.

Poorly maintained vehicles that pollute, no matter how old, should be required, at a minimum, to meet the standards applica-

ble to them when they were manufactured. If repairs are needed, they should be made.

(4) *Clean-fuel vehicle program.*—The State must submit a SIP revision, for each area covered by the clean-fuel vehicle program prescribed under section 212(d), which includes all measures necessary to make use of clean alternative fuels in clean fuel vehicles economic from the vehicle owners' standpoint. Each area which seeks voluntary inclusion in the Federal clean fuel vehicle program must also submit a SIP revision. If a Stato fails to meet this requirement, it may not receive credit in any attainment demonstration or reasonable further progress demonstration for emissions reductions from implementation of the Federal clean-fuel vehicle requirements under section 212.

(5) *Transportation controls.*—Beginning six years after enactment and each three years thereafter the State is to submit a demonstration as to whether aggregate vehicle miles traveled, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with assumptions used in the area's demonstration of attainment. Where such parameters exceed the levels used in the area's attainment demonstration the State has 18 months to develop a revision to its implementation plan containing a program of transportation control measures adequate to reduce emissions to conform with the vehicle emission levels projected in the attainment demonstration. This revision is to be developed in accordance with transportation guidance issued by the Administrator under section 108(f), and is to include implementation and funding schedules adequate to achieve expeditious emission reductions. Alternatively, under section 182(c)(5) the State may offset additional pollution from unprojected increases in vehicle miles traveled or congestion, with achievement of comparable emission reductions from implementation of controls not otherwise required under this Act on other source categories. There must also be measures to reduce congestion.

(6) *De Minimis rule.*—In applying the new source review provisions of Part D to serious areas any physical change in, or change in the method of operation, a stationary source is not to be considered *de minimis* unless the increase in net emissions from the source, when aggregated with all other increases in net emissions over any period of five consecutive years, including the calendar year in which such increase occurred, does not exceed 25 tons.

(7) and (8) *Special rule for modifications of sources.*—Sections 182(c) (7) and (8) establish special rules for modification of major sources. Section 182(c)(8) differs from section 182(c)(7) in that it is applicable to sources releasing 100 tons per year or more, while section 182(c)(7) is applicable to sources releasing less than 100 tons per year. The triggers for these provisions are (1) that a physical change or change in the method of operation has occurred, as defined in section 111(a)(4); and (2) that the *de minimis* threshold has been exceeded. Once these triggers occur, then the unit involved must (if the sourco is less than 100 tons per year) meet BACT-level technology. If the source obtains internal offsets at a ratio of at least 1.3:1, then there will not have been a modification under section 173. For units at sources greater than 100 tons per year, once the triggers have occurred, LAER and offsets are required for the

unit, unless the source obtains internal offsets at a ratio of a least 1.3:1. The permitting provisions in the two paragraphs are also different.

Section 182(c) (7) and (8) provide that in the case of sources where a unit has undergone a change producing a greater than *de minimis* emission increase, and such 1.3 to 1.0 internal offsets have not been secured, such change is to be considered a modification subject to all of the new source review requirements of Part D. However, section 182(c)(7) provides that in applying section 173(a)(2) the required technology for sources emitting less than 100 tons per year shall be the best available control technology, as defined in Clean Air Act section 169, rather than the lowest achievable emission rate, as currently provided in section 173(a)(2).

(9) *Contingency measures.*—The SIP revision must provide for the implementation of specific measures to take effect upon the failure of the area to achieve any applicable interim schedule (including any milestone), or te attain the standard by the applicable attainment date. Such contingency measures must be adequate to assure that the emission reduction shortfall is compensated for, and must take effect without further action by the State or the Administrator upon the failure of the area to meet the interim requirement or attainment deadline.

(10) *General offset requirement.*—For purposes of satisfying the emission offset requirements of Part D in marginal ozone nonattainment areas, the ratio of total required emission reductions to total increased emission from a new or modified facility is to be at least 1.2 to 1.

Severe area requirements.—Section 182(d) provides that all requirements for SIP revisions applicable to serious areas are also to be applicable to severe areas. Additional requirements are provided for in this subsection, as described below. For any severe area the terms "major source" and "major stationary source" apply to all sources included in the section 302 definition of "major stationary source", as well as any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit 25 tons or more of VOCs. These definitional changes and interpretations have the same principal effects as described for serious areas. As already noted, it is not the Committee's intent that natural gas pumping stations or other natural gas facilities connected by a pipeline but not otherwise within a contiguous area and under common control should be grouped together and considered a single source under this provision.

Additional SIP revisions required for severe areas include the following:

(1) *Vehicle miles traveled.*—Within two years of enactment, the State is required to submit a SIP revision including all reasonably available techniques for reducing aggregate vehicle emissions. At a minimum the revision must include specific enforceable strategies and transportation control measures adequate to offset any growth in emissions from increases in vehicle miles traveled (VMT). The baseline for determining whether there has been growth in emissions due to increased VMT is the level of vehicle emissions that would occur if VMT held constant in the area. The State must consider the measures specified in section 108(f), as amended by this

bill, and include in the SIP, for any such measures not included in the plan, an explanation of why such measure was not adopted, specifying the emission reduction measure adopted in its place to achieve a comparable reduction in emissions, or providing reasons why such reduction is not necessary to attain the health-based standard for ozone air pollution

Where a transportation control strategy listed in section 108(f) is not utilized the State must explain in its implementation plan why it was not, and must provide an alternative means of achieving the emission reductions that would have been attained, unless it can show that such reductions are not needed for attainment. It should be noted that amended section 108(f) requires that the State should ensure adequate access to downtown and other commercial and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. This provision responds to the extreme importance of transportation planning to attain and maintain ambient air quality standards in the nation's most severely polluted cities.

(2) *Offset requirements.*—For purposes of satisfying the emission offset requirement of Part D in severe ozone nonattainment areas the ratio of total required emission reductions to total increased emissions from a new or modified facility is required to be at least 1.3 to 1. However, if the State air quality plan requires that all existing major sources in the nonattainment area use the best available control technology, as defined in section 169, for the control of VOCs, the required offset ratio shall be 1.2 to 1.

The lower offset ratio for areas requiring best available control technology, instead of reasonably available control technology, for all existing sources is intended to provide an incentive for the use of more effective pollution control technology on existing sources, and is further intended as a recognition that once all existing sources are tightly controlled and additional emission reductions needed for offsets will be more difficult to secure.

Extreme area requirements.—Section 182(e) provides that all requirements for SIP revisions applicable to severe areas are also to be applicable to extreme areas, as well as additional requirements provided for in this subsection. For any extreme area the terms "major source" and "major stationary source" apply to all sources included in the section 302 definition of major stationary source, as well as any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit 10 tons or more of VOCs. These definitional and interpretation changes have the principal effects described for serious areas. As already noted, it is not the Committee's intent that natural gas pumping stations or other natural gas facilities connected by a pipeline but not otherwise located within a contiguous area and under common control should be grouped together and considered a single source under this provision.

Section 182(e) explicitly provides that the provisions of clause (ii) of section 182(b)(1)(A), which allows qualifying areas to achieve less than the required 15 percent emission reduction in the first six years following enactment, and the provisions of clause (ii) of section 182(c)(2)(B), which allows qualifying areas to achieve less than

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I do not believe it will cost $500 per car to comply with the new Clean Air Act. The EPA estimate is apparently based on the assumption that the catalytic converter in every car would have to be replaced during the vehicle's lifetime. But the manufacturers of emission controls and the State of California have testified that improvements in vehicle technology, fuels electronics and catalysts should enable cars to achieve the bill's standards without having to install two catalytic couverters in each automobile. The California Air Resources Board estimates the overall cost of achieving the second round of tailpipe standards at about $122 to $132 per car. This substantially reduces the cost of the committee bill.

The third myth is that the standards are not cost effective; in other words, the cost per ton of emission reductions is too high when compared with other strategies.

The correct data reveals precisely the opposite: The second round of automobile standards is among the most cost-effective strategies for controlling the pollution that will remain in the year 2003. The additional emission controls contained in our bill--as opposed to the President's bill--will according to the American Lung Association remove 243,192 tons of hydrocarbons from the air each year; 13.9 milliou tons of carbon monoxide; and 216,170 tons of nitrogen oxide.

If we don't take that amount of pollution out of car emissions, where will we be able to do so? If not cars, then States will have to cut emissions from shoe factories, bakeries and other sources of similar pollution--at far higher cost and inconvenience to business and consumers. In the extreme--some have testified that if we don't cut pollution from cars--we'll have to examine eliminating law mowers, dry cleaners, and personal deodorants. Experts testified that governmeut would have to turn to restrictions on iteins like these if we don't squeeze pollution from cars.

Finally, we must not forget to figure in the cost of health care, as I have noted earlier. Motor vehicle pollution costs Americans billions each year; in my State of Connecticut, the figure is $1.6 billion in health care costs associated with motor vehicle emissions. I believe Americans are willing to pay $130 more for a new car in order to help keep themselves and their children free of the damage of air pollution to their health--damage that can cost them far more in the future than the entire cost of their car.

TRANSPORTATION CONTROL MEASURES

In addition to strict controls on emissions from motor vehicles, the Senate bill recognizes that, for some parts of the country, it may become necessary to implement transportation control measures to reduce our reliance on the automobile.

There's a lot of talk about how insulated Washington is from the rest of the country, but one thing we share in common with many of our urban and suburban constituents is traffic. Go out to the Shirley Highway or to the beltway and see what the proliferation of automobiles is doing to our air. That pattern of gridlock is being repeated in region after region across the country.

The GAO says that urban congestion levels will increase nearly 300 percent over a 20-year period unless we take steps to change our ways.

The committee bill requires that transportation planning decisions must be evaluated in relation to their impact on air qnality. This kind of connection is important if we are to get

control of motor vehicle use in the years ahead. State and local air pollution control managers agree. In testimony before the environment, their representatives said:

"Significant reductions in vehicle miles traveled are sorely needed in many ozone and carbon monoxide nonattainment areas. Unless transportation projects are evaluated based upon their ability to assist in attaining and maintaining the standards, adequate reductions will be difficult, if not impossible, to achieve."

Even a modest improvement in transportatiou control measures could have a dramatic impact, because at present more than 80 percent of our population commutes to work in automobiles. If the average commuter passenger load were increased by just one person, we would save 33 million gallons of gasoline each day, with a commensurate reduction in pollution.

Our legislation would require EPA to provide guidance to States and localities on the benefits that can be acbieved from transportation controls. It would also encourage severely polluted regions to adopt transportation controls, though the decision as to what controls to implement would be left up to the States. Our bill does not impose any requirement for taxes, rationing, or tolls.

The inclusion of transportation controls in the new Clean Air Act enjoys the support of the Clean Air Working Group, made up of 2,000 small and large businesses, the Clean Air Coalition, the umbrella group of environmental organizations, and State and local air pollution authorities.

ACID RAIN

The critical element of the acid rain bill reported by the committee is the cap on future emissions of sulfur dioxide. Without a cap, the gains from any emission control technologies could simply be wiped out by a proliferation of acid rain sources.

There will be a strong effort mounted by those who want to eliminate the cap. Any such amendments must be defeated if the new Clean Air Act is to preserve its integrity as a strong antipollution measure.

Opponents of the cap will argue that the economic growth of this country is dependent on increased acid rain emissions--they may not say it in quite so many words, but that will be their underlying message. But the statistics do not support this proposition. In fact, since 1970, electricity sales have risen 76 percent. The GNP went up 59 percent and total coal use is up 50 percent. This all occurred during a time when environmental protection measures were being implemented all over America.

Because of environmental controls, emissions of sulfur dioxide actually decreased by 28 percent over the past two decades, while the economy underwent a tremendous boom. Clearly economic growth and environmental protection are not mutually exclusive.

More important, for the long-term protection of the planet, this bill is important because of its emphasis on energy conservation. The United States bears an especially heavy responsibility because of its contribution to global warming. In 1988, U.S. fossil fuel use accounted for close to a quarter of the world's carbon dioxide emissions from fossil fuels. Electric utilities are the largest source of carbon dioxide, emitting about 35 percent of the

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A LEGISLATIVE HISTORY OF THE CLEAN AIR ACT AMENDMENTS OF 1990

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to mobile sources in the initial plan unless a comprehensive plan revision is approved by EPA. It is important to continue to implement the mobile source emission targets as part of the overall attainment strategy unless the State can demonstrate that the ambient standard can be obtained with a different mix of strategies.

Any State that fails to submit a timely and complete (including implementation and funding schedules) plan revision under this subparagraph is subject to the sanction provisions for failing to submit an approvable SIP.

Reasonably available control technology (RACT).—Serious and severe areas must require sources emitting twenty-five tons or more of VOCs or one hundred tons or more of NO_x to install RACT.

For an extreme area, VOC and NO_x sources that emit ten or more tons must install RACT. While provisions under current section 172 of the Act require installation of reasonably available control technology, the requirement has not been uniformly implemented. Most nonattainment areas have relied on the issuance of control technique guidelines (CTGs) by EPA to determine what constitutes RACT and have not ventured beyond the sources covered by CTGs or the levels of control in the guidelines in an effort to comply with the "reasonably available control technology" provision of the Act.

The bill makes clear that State and local agencies are not authorized to ignore controls on NO_x and VOC sources for which no CTG has been issued. Sources of the size specified in the bill must be controlled to levels achievable through the use of measures that are technologically and economically feasible for a class or category of sources. RACT is not a "lowest common denominator" standard and does not mean that every source in a category must be economically and technically capable of complying with the requirement. Rather, RACT should be achievable by the majority of sources in a category. With respect to VOC sources, a minimum standard of 80 percent reduction from uncontrolled levels is achievable and requirements that get less than that level should be based on documentation of the technical or economic infeasibility of the presumed minimum 80 percent requirement.

Transportation control measures (TCMs).—Severe and extreme areas are required to offset growth in vehicle miles traveled by implementing the transportation controls listed in revised section 108(f) of the Act in accordance with EPA guidance on means for implementing, and the emissions reductions potentials of, the measures. If a State or local agency can show that the adoption of measures (other than any already required by the Act) other than one or more transportation measures will result in comparable emissions reductions, or that such reductions are not needed to provide for timely attainment, then the agency may choose not to implement that (or those) TCMs.

The provision in the bill allowing the State or local agency to present reasons why a reduction from a particular transportation measure is not necessary to meet the interim emissions reductions requirements of subsection 183(b)(3)(B) of the Act or to attain a national ambient air quality standard is not intended to undermine the bill's requirements that areas must attain the standard as ex-

peditiously as practicable. Pursuant to this requirement, EPA must determine whether such a control measure would permit an area to improve its air quality and attain the primary ambient standard more quickly if it were implemented. For example, for an area to justify not adopting a measure specified in section 108(f), it would have to show that adoption of the measure (or a measure providing comparable reductions) would not reduce the number of exceedances or result in more expeditious attainment of the standard.

Employer vehicle occupany programs.—The bill adds a new provision, to be included in State implementation plans for States containing ozone areas classified as severe or extreme (and also for CO areas classified as serious), requiring certain employers in such areas te implement programs designed to reduce work-related vehicle trips and miles traveled by employees. The purpose of the provision is to require employers of one hundred or more employees in a nonattainment area to provide services, facilities or incentives to encourage employees to share commuting trips. The intent of the provision is to reduce both the number of vehicles on the road during rush hours and the time the remaining cars spend idling or operating at inefficient low speeds, and thereby to reduce emissions of hydrocarbons, carbon monoxide and NO_x.

The bill requires such ares to submit SIP revisions requiring employers of over one hundred employees in the area to achieve no less than a 25 percent improvement in commuting vehicle occupancy above a baseline that is the areawide average for all such trips. The Administrator is required to issue guidance under revised section 108(f) of the Act for implementing this section and may specify baseline occupancy rates that vary depending on portions of nonattainment areas (center city, suburban, etc.) or on differing characteristics among nonattainment areas. Thus, for example, the baseline vehicle occupany rate for center city trips where transit is more readily available might bo 1.7 passengers per vehicle while for a suburban area, the baseline rate might be ouly 1.1 or 1.2.

Each employer is required to submit a plan demonstrating compliance with the provision within two years after the SIP submission.

The bill allows an employer to demonstrate compliance with the requirement even if the 25 percent increase is not achieved if the employer can show that after expenditures have been made on the ridership program equal to or greater than the cost of providing each employee with a parking space at the workplace, the 25 percent increase cannot bo achieved.

In determining the cost of providing each employee with a parking space at the workplace, the employer shall either report the actual rental cost of the spaces if provided by a separate entity, or the total of direct and indirect costs incurred by the employer.

The Office of Tecluology Assessment (OTA) reports that in areas where employer-related programs have been undertaken, some companies have increased the proportion of their employees who do not ride alone to more than 80 percent of their work force. The most far-reaching programs to increase the average ridership during peak periods have been implemented in California. In Los Angeles, a regulation is already in effect to increase average ridership from the current level of 1.13 to a new level of 1.3–1.75 people