ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-1413

NATURAL RESOURCES DEFENSE COUNCIL and SIERRA CLUB

Petitioners,

v.

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

Respondents.

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

PROOF OPENING BRIEF OF ENVIRONMENTAL PETITIONERS

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Dated: May 19, 2017

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATURAL RESOURCES DEFENSE COUNCIL and SIERRA CLUB, *Petitioners*, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and SCOTT PRUITT, Administrator, U.S. Environmental Protection Agency, *Respondents*.	Case No. 16-1413

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to the Order of December 6, 2016, Natural Resources Defense Council and Sierra Club (collectively, "Environmental Petitioners") submit this certificate as to parties, rulings, and related cases.

(A) Parties and *Amici*

(i) Parties, Intervenors, and *Amici* Who Appeared in the District Court

This case is a petition for review of final agency action, not an appeal from the ruling of a district court.

(ii) Parties to This Case

Petitioners:

Natural Resources Defense Council and Sierra Club

Respondent:

United States Environmental Protection Agency. Also named as a respondent is Scott Pruitt, in his official capacity as Administrator of the United States Environmental Protection Agency.

Intervenors:

The American Petroleum Institute was granted leave to intervene in this case on January 18, 2017.

(iii) *Amici* in This Case

None at present.

(iv) Circuit Rule 26.1 Disclosures

See disclosure form filed separately on January 5, 2017.

(B) Rulings Under Review

Petitioners seek review of the final action taken by EPA at 81 Fed. Reg. 68,216 (Oct. 3, 2016) and entitled "Treatment of Data Influenced by Exceptional Events."

(C) Related Cases

Environmental Petitioners are not aware of any related cases.

DATED: May 19, 2017

Respectfully submitted,

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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 28(a)(1) and D.C. Circuit Rules 26.1 and 28(a)(1)(A), Sierra Club and Natural Resources Defense Council (collectively, "Environmental Petitioners") make the following disclosures:

Sierra Club

Non-Governmental Corporate Party to this Action: Sierra Club.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Sierra Club, a corporation organized and existing under the laws of the State of California, is a national nonprofit organization dedicated to the protection and enjoyment of the environment.

Natural Resources Defense Council

Non-Governmental Party to this Action: Natural Resources Defense Council ("NRDC").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Natural Resources Defense Council is a corporation organized and existing under the laws of the State of New York. NRDC is a nonprofit membership organization of approximately 346,000 members nationwide focused on the protection of public health and the environment.

DATED: May 19, 2017

Respectfully submitted,

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GLOSSARY

CAA	Clean Air Act
EPA	Environmental Protection Agency
JA	Joint Appendix
NAAQS	National Ambient Air Quality Standards
NO_x	oxides of nitrogen
NRDC	Natural Resources Defense Council
ppm	parts per million
PM_{10}	particulate matter of 10 microns or less in diameter

JURISDICTIONAL STATEMENT

Respondents U.S. Environmental Protection Agency and Scott Pruitt, Administrator (collectively "EPA" or "the Agency") promulgated regulations governing the exclusion of event-influenced air quality data from certain regulatory decisions under the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, titled "Treatment of Data Influenced by Exceptional Events." 81 Fed. Reg. 68,216 *et seq.* (Oct. 3, 2016), JA___. Pursuant to Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1), this Court has jurisdiction to review that final action. Environmental Petitioners filed a timely petition for review of this action on December 2, 2016, within the statutory 60-day period.

STATUTES AND REGULATIONS

Pertinent statutory sections, regulations, and legislative history appear in a separate addendum.

STATEMENT OF ISSUES

Whether Respondent EPA contravened the Clean Air Act or acted arbitrarily by expanding the definition of "exceptional event" in violation of the statutory language found at 42 U.S.C. §7619(b).

STATEMENT OF THE CASE

I. Introduction

In section 319 of the Clean Air Act, Congress allows air pollution from "exceptional events" to violate the Clean Air Act's health-based air quality standards because qualifying events are understood to be exceptional. The Act and its legislative history make clear Congress is concerned mainly with natural events, like dust storms. Emissions from human activity may qualify as exceptional events only in very narrow circumstances, which do not include pollution from industrial plants or other human activity that recurs at particular locations.

EPA's final exceptional events rule turns this statutory design on its head. EPA's rule allows air pollution from industrial plants and recurring anthropogenic activities to be deemed natural events, if those activities and emissions play any role in the events less than 100%. Regular industrial pollution in vast amounts may qualify as a natural event and exceptional event and violate Clean Air Act health standards. EPA's rule makes these industrial air pollution health violations unexceptional. Environmental Petitioners challenge EPA's rule because it violates plain statutory language in multiple respects. Petitioners seek an order to vacate the rule and to direct EPA to issue lawful standards.

II. Statutory Background

A. National Ambient Air Quality Standards

Congress enacted the Clean Air Act Amendments of 1970 "to provide for a more effective program to improve the quality of the Nation's air." H.R. Conf. Rep. 1783, 91st Cong., 2d Sess. 1 (1970). The health-based National Ambient Air Quality Standards (NAAQS) for "criteria" air pollutants, and the obligation to attain and maintain those standards, are the foundation of the Clean Air Act. 42 U.S.C. §7410. The six "criteria" air pollutants are ozone, particulate matter, carbon monoxide, lead, sulfur dioxide and nitrogen dioxide. *Id.*§7409. The Act directs EPA to set health-based standards for these pollutants and then directs the states to devise "state implementation plans" to meet or "attain" EPA's standards by certain deadlines. *Id.* §§ 7410, 7502, 7511-7514a.

States measure their compliance with these national standards through a network of air quality monitors. EPA designates areas as either in "attainment" or "nonattainment" with national standards based on monitored air quality data. *Id.* § 7407(d)(1). States that do not meet the standards (states that are in "nonattainment") must impose more rigorous pollution control measures than states that meet the standards (are in "attainment"), including detailed measures prescribed by Congress. *Id.* § 7502.

In designing this structure in 1970, Congress emphasized the importance of establishing ambient standards to protect public health everywhere in the nation. When describing the legislation, Senator Muskie stated the goal "that all Americans in all parts of the Nation should have clean air to breathe, air that will have no adverse effects on their health." He saw it as the "responsibility of Congress" to "say that the requirements of this bill are what the health of the Nation requires, and to challenge polluters to meet them." 1 Legislative History of the Clean Air Amendments of 1970 (Committee Print compiled for the Senate Committee on Public Works by the Library of Congress), Ser. No. 93-18, p. 224, 227 (1974).

B. Air Quality Monitoring Data and the NAAQS

EPA evaluates air quality monitoring data to determine whether the relevant counties or localities are meeting or exceeding national health standards for the monitored air pollutants. The Clean Air Act requires that each state establish a network of monitors for NAAQS pollutants, with location and operational requirements determined by EPA. The Agency has developed policies and procedures to ensure that air quality monitors function properly and register accurate data, and to ensure that compliance determinations are based on a complete picture of air quality data. EPA calls this network the "State and Local

Air Monitoring Stations (SLAMS)" network, where "the states must provide [EPA] with an annual summary of monitoring results at each SLAMS monitor, and detailed results must be available to [EPA] upon request."[1] Within this network, National Air Monitoring Stations (NAMS) "meet more stringent monitor siting, equipment type, and quality assurance criteria." *Id.*[2]

Air quality monitors measure air pollution concentrations of the criteria air pollutants subject to national health-based air quality standards. Attainment and nonattainment with the NAAQS for a particular pollutant are determined based upon whether monitored air pollution concentrations exceed the "design value" of the applicable NAAQS standard. The "design value" is a calculation of how much air pollution is in the air, over a specified period of time, based on monitored air pollution data.

For example, for the current ground-level ozone health standard, "the primary and secondary national ambient air quality standards for [ozone] are met at

[1] U.S. EPA, Air Pollution Monitoring, https://www3.epa.gov/airquality/montring.html (last visited May 16, 2017).

[2] There are two additional types of air quality monitors that EPA and states employ. EPA says that:

> A third type of monitor, the Special Purpose Monitor (SPMS), is used by State and local agencies to fulfill very specific or short-term monitoring goals. The 1990 Amendments to the Clean Air Act also requires a fourth category of a monitoring station, the Photochemical Assessment Monitoring Station (PAMS), which measures ozone precursors (approximately 60 volatile hydrocarbons and carbonyl). *Id.*

an ambient air quality monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average [ozone] concentration (*i.e.*, the design value) is less than or equal to 0.070 ppm." Thus, each monitored "exceedance" of the 0.070 ppm ozone concentration—a monitored concentration higher than 0.070 ppm of ozone—would violate the ozone NAAQS. The fourth exceedance over a three-year period would result in designation of an area as nonattainment, or redesignation of an area to a higher (more serious) nonattainment classification. *See generally* 42 U.S.C. § 7407(d) (NAAQS designations).

EPA's Exceptional Events rulemaking, and section 319 of the Clean Air Act on which it is based, exist within the context of the Act's NAAQS air quality monitoring regime. When an "exceptional event" meets all of the regulatory requirements and causes air pollution to exceed standards at a monitor, the data demonstrating that exceedance may be excluded by EPA in determining NAAQS violations. 42 U.S.C. § 7619(b)(3)(B).

C. Clean Air Act Section 319

In 2005, Congress amended Clean Air Act § 319 to require EPA to promulgate regulations "governing the review and handling of air quality monitoring data influenced by exceptional events." 42 U.S.C. § 7619(b)(2)(A), (B).[3]

Clean Air Act section 319 defines an "exceptional event" as follows:

> The term "exceptional event" means an event that —
> (i) affects air quality;
> (ii) is not reasonably controllable or preventable;
> (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and
> (iv) is determined by the Administrator through the process established in the regulations … to be an exceptional event.

Id. § 7619(b)(1)(A). This plain statutory language, connected by "and," requires all four criteria and their constitutive elements to be satisfied before an exceedance of a health standard may be treated as an exceptional event. Nothing here or in any other portion of section 319 purports to grant EPA authority to create any additional exclusions to be treated as exceptional events, nor to ignore any conditions on a qualifying exceptional event.

[3] Safe Accountable Flexible Efficient-Transportation Equity Act: A Legacy for Users (SAFETEA–LU) of 2005, Pub. L. No. 109-59 (2005).

The statute also indicates what are not exceptional events. The statutory definition excludes "stagnation of air masses or meteorological inversions," "a meteorological event involving high temperatures or lack of precipitation" and "air pollution relating to source noncompliance." *Id.* § 7619(b)(1)(B). These detailed exclusions in § 7619(b)(1)(B) further indicate that Congress considered the issues carefully and decided which events should not be treated as exceptional events.

The statute sets forth certain principles and requirements that EPA must follow in promulgating regulations. First, the statute directs that "the Administrator shall follow … the principle that protection of public health is the highest priority." *Id.* § 7619(b)(3)(A)(i). The statute also specifies that "each State must take necessary measures to safeguard public health regardless of the source of the air pollution." *Id.* § 7619(b)(3)(A)(iv). Other principles require that "timely information should be provided to the public in any case in which the air quality is unhealthy," air quality data should be provided in a timely manner through a Federal database accessible to the public, and data should be screened so that events not likely to recur are represented accurately in all monitoring data and analyses. *Id.* § 7619(b)(3)(A)(ii), (iii) & (v).

Lastly, § 319 requires that regulations, "at a minimum," shall provide that the occurrence of an exceptional event "must be demonstrated by reliable, accurate data"; "a clear causal relationship must exist between the measured exceedances of a [NAAQS] and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location"; "there is a public process for determining whether an event is exceptional"; and "there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the [NAAQS]." *Id.* § 7619(b)(3)(B).

Section 319 originated in the Senate bill. There was no comparable provision in the House bill. H.R. Rep. No. 109-203, at 1066 (2005) (Conf. Rep.). The legislative history for § 319 appears in the Conference Committee report. *Id*. at 1066-67. The report only discussed natural events as qualifying exceptional events. The report only discussed two congressional examples of natural events: "forest fires or volcanic eruptions." *Id.* at 1066.

The report also described *why* certain natural events would qualify as exceptional events—specifically, "events which are part of natural ecological processes, which generate pollutants themselves that cannot be controlled, qualify

as exceptional events." *Id.* at 1066-67. The report also explained what Congress did not consider to be qualifying natural events — and why: "[n]atural climatological occurrences such as stagnant air masses, high temperatures, or lack of precipitation influence pollutant behavior but do not themselves create pollutants. Thus, they are not considered exceptional events." *Id.* The Conference Committee report did not indicate in any way that human activity could be considered a natural event.

III. Regulatory Background

A. The 2007 Exceptional Events Rulemaking

On March 10, 2006, EPA proposed a rulemaking "to govern the review and handling of air quality monitoring data influenced by exceptional events," as directed by the 2005 amendment to the statute. Treatment of Data Influenced by Exceptional Events, Proposed Rule, 71 Fed. Reg. 12,592 *et seq.* (Mar. 10, 2006), JA___("the 2006 proposal"). EPA's proposed rule language adopted the statutory language of section 319 by defining an exceptional event as:

> an event that affects air quality; is not reasonably controllable or preventable; is a natural event or an event caused by human activity that is unlikely to recur at a particular location; and is determined by the Administrator in accordance with 40 CFR 50.13 to be an exceptional event; it does not include stagnation of air masses or meteorological inversions; a meteorological event involving high temperatures or lack of precipitation; or air pollution relating to source noncompliance.

Id. at 12,608/2, JA___. The 2006 proposal defined a "natural event" simply as "an event in which human activity plays little or no direct causal role." *Id.* The 2007 final rule adopted the proposed definitions of "exceptional event" and "natural event." 72 Fed. Reg. 13,560, 13,580/1-2 (March 22, 2007) JA___ ("the 2007 Rulemaking" or "2007 Rule"). The preamble to the 2007 final rule did not explain what "little or no direct causal role" meant, other than "small historical human contributions" such as "the long-term [human] diversion of water from a lake" that resulted in "high concentrations of dust from a lakebed." *Id.* at 13,563-13,564.

Clean Air Act section 319(b)(4), titled "Interim Provision," sets forth the congressional directive that various EPA guidance on air quality data "shall continue to apply" only "[u]ntil the effective date" of EPA's initial exceptional event regulation promulgated under 42 U.S.C. § 7619(b)(2)(B), due two years after the 2005 amendment to the Act. The effective date for the 2007 Rules was May 21, 2007. 72 Fed. Reg. at 13,560.

Petitioner NRDC challenged the 2007 Rule in this Court, contesting EPA's definition of "natural event" and other types of polluting events that the Agency had indicated in the preamble were eligible for exclusion as exceptional events under the rule. *NRDC v. U.S. EPA*, 559 F.3d 561 (D.C. Cir. 2009); 81 Fed. Reg.

68,220/1, JA___. This Court held that EPA's purported authorization for high wind events to be treated as exceptional events in preambular text was a "legal nullity," because EPA had failed to include these authorizations in final rule text. *NRDC v. U.S. EPA*, 559 F. 3d at 565; 81 Fed. Reg. at 68,220/2, JA___. The Court held further that various other EPA examples of events deemed "exceptional" in the preamble were "hypothetical and non-specific," and thus not reviewable. *Id.* at 565 (internal citations omitted). Finally, this Court held that NRDC could not challenge the regulatory definition of "natural event" because the court concluded NRDC had failed to alert EPA officials to specific objections about the regulatory definition. *Id* at 563-4. Due to the finding that preambular language was a "legal nullity," this Court's 2009 decision held parts of the 2007 Rulemaking to be without legal effect. *Id* at 565.

B. The 2016 Exceptional Events Rulemaking

EPA undertook the 2016 rulemaking out of an acknowledgement that the 2007 Rulemaking had been a "challenging process" both for the states and the Agency. *Id.* at 68,220/2, JA___. The Agency first issued a document titled the "Interim Exceptional Events Implementation Guidance," and noted the need to undertake "a notice and comment rulemaking effort to revise the 2007 Exceptional Events Rule." *Id.*

EPA issued the proposed rule on November 20, 2015. 80 Fed. Reg. 65,292 (Oct. 26, 2015). The Agency "proposed to revise" the 2007 Rulemaking's regulatory definition of "natural event," to include the notion of "an event and its resulting emissions and to acknowledge that natural events can recur." 81 Fed. Reg. 68,231/1, JA___. Moreover, for the first time the Agency proposed to:

> include language in the regulatory definition to clarify that anthropogenic emission sources that contribute to the event emissions (and subsequent exceedance or violation) that are reasonably controlled do not play a "direct" role in causing emissions.

Id. EPA also added the language "at the same location" to the "natural event" regulatory definition to "more clearly indicate that natural events can recur in the same area or at the same location and still be considered natural events." *Id.* At 68,231/2, JA___. Finally, the Agency included language for the very first time "for the purposes of the definition of a natural event" to "clarify that the 'direct causal' language applies to reasonably controlled anthropogenic sources when considering whether the event is natural." *Id.* (emphasis added).

Petitioners commented extensively on the proposal, noting that EPA's proposed revisions to the exceptional event regulations "violate[] the plain language of the statute." Docket No. EPA-HQ-OAR-2013-0572-0160, pg. 8, JA___. Petitioners noted that the statute distinguished between natural events (that

"do not have a human origin"), and "events caused by human activity." *Id.* Petitioners objected to including human activity and emissions in the proposed "natural event" definition, due to the clear and explicit distinction between a "natural event" and "event caused by human activity" under plain statutory language. *Id.* Petitioners objected further to the proposed "natural event" definition's inclusion of "reasonably controlled" human activity and their emissions." *Id*. Petitioners commented to the Agency that "both the statute and logic" did not allow the proposed natural event definition nor preambular gloss to be finalized, citing the statutory dichotomy between human and natural events in 42 U.S.C. §7619(b)(1)(A)(iii) and its legislative history. *Id.*

Petitioners also noted that the "distinction between 'direct' [emission-causing role] and 'indirect' that EPA attempts to draw is irrelevant," and asserted the importance of analyzing exceptional events on a case-by-case basis. *Id.* 8-9. The Maricopa Association of Governments commented that EPA's conflation of human activities and natural events was particularly problematic with respect to recurrence, where it is "plainly contrary to the statutory definition of a 'natural event'" to "incorporate the 'unlikely to recur' criteria, a criteria that is (sic) only applicable to events caused by human activity." Docket No. EPA-HQ-OAR-2013-0572-0107, at 7. For these reasons, commenters told EPA that the proposed

definition of "natural event" in 40 C.F.R. § 50.1(k) violated plain statutory language.

EPA responded to commenters by conceding that "Congress included both 'human activities' and natural event[s]' as separate activities within an exceptional event."[4] The Agency went on to argue that it believed its approach was "reasonable," however, because "[Congress] also required the continued use of previous guidance as an interim provision until the effective date of the 2007 Exceptional Events Rule." Response to Comments, at 34. EPA argued that "there is not always a bright line" between anthropogenic activity and a natural event. *Id.*

The Agency also responded to the component parts of its new definition, discussing "reasonable controls," "little or no direct causal role," and "the concept of recurrence." *Id.* at 33-35, JA___. Finally, EPA said that it had "come to realize that it may be helpful to think of an event in terms of the source of its emissions," where "if an underlying source is natural… then the ensuing event […] could be considered a 'natural event' under the Exceptional Events Rule," citing volcanoes, wildfires, and earthquakes. 81 Fed. Reg. at 68,231/3-2/1, JA__-__.

[4] U.S. EPA, Responses to Significant Comments on the 2015 Proposed Rule Revisions to the Treatment of Data Influenced by Exceptional Events, Docket No. EPA-HQ-OAR-2013-0572 (November 20, 2015; 80 FR 72840), at 34 (emphasis added) (Hereinafter "Response to Comments").

EPA promulgated a final rule on October 3, 2016, which adopted the following definition of "natural event":

> *natural event* means an event and its resulting emissions, which may recur at the same location, in which human activity plays little or no direct causal role. For purposes of the definition of a natural event, anthropogenic sources that are reasonably controlled shall be considered to not play a direct role in causing emissions.

Id. at 68,277/1, JA___. EPA noted in the preamble to the final rule that natural events would encompass anthropogenic sources that are reasonably controlled, and such sources would not be considered to play a direct role in causing emissions "*regardless of the magnitude of emissions generated* by these reasonably controlled anthropogenic sources and *regardless of the relative contribution of these emissions*." *Id.* (emphasis added). Under this wholly new "natural event" scheme, EPA clarified in its preamble two situations that would not be natural events: (1) "if *all* of the event-related emissions originated from anthropogenic sources," *id.* (emphasis added); and (2) "if anthropogenic sources that contributed to the event-related emissions could have been reasonably controllable but reasonable controls were not implemented at the time of the event." *Id.*

Thus, under the 2016 Rule, if 100% of emissions ("all") that violate a health standard originated from controlled human activities, the event would not be treated as a natural event. However, if anything less than 100% of emissions

("regardless of the magnitude of emissions," "regardless of the relative contribution of these emissions") that violate a health standard originated from controlled human activities, EPA allows the violating emissions to be treated as a natural event eligible to be excluded as an exceptional event. *Id.*

In the preamble to the final 2016 Rule, EPA claimed that the 2007 Rule preamble had explained the same understanding of when a human activity "played little or no direct role" in the "natural event" definition, based on whether anthropogenic activities were "reasonably controlled at the time of the event." 81 Fed. Reg. at 68,231/1 (emphasis added) (citing 72 Fed. Reg. at 13,563-13,564). This is incorrect. The pages in the 2007 final rule preamble that EPA's 2016 rule preamble cites has no such discussion.[5] The 2007 Rule preamble described high wind events alone in this manner, 72 Fed. Reg. at 13,576/3, and the Agency characterized the preambular approach as a "final rule." *Id.* EPA subsequently conceded this characterization was a "drafting error" (at the oral argument concerning the 2007 Rule), and this Court declared the "high wind events section of the preamble [to be] a legal nullity." 559 F. 3d at 565.

[5] *Cf.* 81 Fed. Reg. at 68,231/1, to 72. Fed. Reg. at 13,563-13,564. Instead, as noted above, EPA only offered this explanation for the meaning of "little or no direct causal role" by human activity: "*small historical* human contributions" such as "the long-term [human] diversion of water from a lake" that resulted in "high concentrations of dust from a lakebed." *Id.* at 13,563-13,564 (emphasis added).

In the preamble to the final 2016 Rule, EPA explained a motivation for adopting an expanded definition of natural event and allowing more human activity to qualify as an exceptional event: "the mechanisms in the Exceptional Events Rule provide the most regulatory flexibility in that air agencies can use these provisions *to seek relief from designation as a nonattainment area*." 81 Fed. Reg. at 68,246/1, JA__ (emphasis added).

SUMMARY OF ARGUMENT

The final exceptional events rule violates the plain language of Clean Air Act § 319 by defining "natural event" to include a direct causal role for human activities, rather than limiting natural events to occurrences in nature. The final rule violates § 319 by treating reasonably controlled human activity as a "natural event" based on the contention that the human activity does not play a direct role in causing emissions. The rule violates § 319 by ignoring and rendering irrelevant whether an event caused by human activity is preventable. Finally, the rule violates § 319 by treating as exceptional events those events caused by human activity that recur at a particular location or are likely to recur at a particular location.

STANDING

Petitioners NRDC and Sierra Club have standing to challenge EPA's exceptional events rule and associated procedural violation on behalf of its

members. *See Friends of the Earth v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 180-81 (2000); *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1987). Petitioners' core missions include combating excess air pollution and the resulting health and environmental harms, and advocating for stronger measures to protect and enhance air quality. *See* Gina Trujillo Decl. ¶ 4 (NRDC organizational interest), Huda Fashho Decl. ¶ 6 (Sierra Club organizational interest) (standing declarations appear in an Addendum B to this brief).

The challenged EPA decisions directly harm Petitioners' members. Petitioners' members live, work, and recreate in communities near and downwind from polluting activities for which EPA allows violations of health-based air quality standards to be ignored. *See* Decls. of Beverly Janowitz-Price, ¶¶ 2-4; Craig Volland ¶¶ 2-3; Elvera Skokan ¶¶ 2-3. Every application of EPA's rule will be one in which data showing exceedances or violations of the health-based NAAQS will be excluded. *See, e.g.*, 81 Fed. Reg. at 68,216/1, JA___. EPA, state and local officials already have applied the rule to exclude data showing exceedances and air quality violations in communities where Petitioners' members live.[6] The

[6] *See, e.g.*, Arizona Department of Environmental Quality, State of Arizona Exceptional Event Documentation for the Events of July 2nd through July 8th 2011, for the Phoenix PM10 Nonattainment Area (applying to exclude monitored PM_{10} exceedance data in Phoenix, Arizona due to windblown dust events that were the result of "natural events") *available at* https://www.epa.gov/sites/production/files/2015-

challenged decisions therefore have exposed and will continue to expose Petitioner's members to harmful air pollution and the risk of serious health effects, including asthma, bronchitis, lung inflammation, chronic respiratory disease, cardiopulmonary disease and cardiovascular disease. *See, e.g.*, 73 Fed. Reg. 16,436, 16,440/1-43/3 (Mar. 27, 2008), JA___-__ (health effects for ozone); 71 Fed. Reg. 61,144, 61,151/2-52/1, 61,178/1-79/1 (Oct. 17, 2006), JA ___-___, ___-__ (health effects for particulate matter). *See* Decls. of Janowitz-Price ¶¶ 3-5; Skokan ¶ 3; Volland ¶ 3. Petitioners' members also have altered their behavior and suffered diminished aesthetic and recreational enjoyment of their surroundings as a result of air pollution in their communities. *See* Decls. of Janowitz-Price ¶ 3-5; Volland ¶¶ 3-5; Skokan ¶¶ 3-5.

These are cognizable aesthetic, recreational, and human health injuries. *See, e.g.*, *Laidlaw Envtl. Servs.*, 528 U.S. at 183 ("[E]nvironmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the

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05/documents/az_deq_july_2011_pm10_ee_demo_final_20120308.pdf (last visited May 17, 2017) JA___; State of Kansas Exceptional Event Demonstration Package April 6, 12, 13, and 29, 2011 (applying to exclude monitored ozone exceedance data in the Kansas City and Wichita, Kansas areas due to Flint Hills wildfires) *available at* https://www.epa.gov/sites/production/files/2015-05/documents/kdhe_exevents_final_042011.pdf; Decls. Of Janowitz-Price ¶¶ 2-4, 6; Volland ¶ 4-5; Skokan, ¶¶ 4-5.

challenged activity."). Petitioners' injury-in-fact is caused by EPA's unlawful actions and will be redressed by a decision vacating EPA's actions and ordering the Agency to comply with the Clean Air Act on remand.

Petitioner may therefore sue on behalf of its members because (a) its members would have standing to sue in their own right, (b) neither the claims asserted nor the requested relief require proof of individualized damages, and therefore do not require the participation of individual members, and (c) the interests Petitioner seeks to protect are germane to the organization's purposes. *Hunt*, 432 U.S. at 343; Trujillo Decl. ¶ 4; Fashho Decl. ¶ 6.

STANDARD OF REVIEW

Under *Chevron U.S.A., Inc. v. NRDC*, this Court rejects agency statutory interpretations that are either contrary to the "unambiguously expressed intent of Congress" or unreasonable. 467 U.S. 837, 842-43 (1984). The Court must "give[] effect" to congressional intent discerned using "traditional tools of statutory construction." *Id.* at 843 n.9. When "the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id*. at 842-43. An agency receives "no deference" on this issue. *Cajun Elec. Power Coop. v. FERC*, 924 F.2d 1132, 1136 (D.C. Cir. 1991). "In ascertaining the plain meaning of the statute, the court

must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K-Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988).

If the statute is either "silent or ambiguous," the Court may defer to the Agency's "reasonable" interpretation provided that interpretation is consistent with the statute and supported by a detailed and reasoned explanation. *Rettig v. Pension Benefit Guar. Corp.*, 744 F.2d 133, 151 (D.C. Cir. 1984). Of particular relevance here, the Court construes narrowly any statutory authority to exempt regulated entities from otherwise applicable law. *Comm'r of Internal Revenue v. Clark*, 489 U.S. 726, 739 (1989).

Under *Chevron*, EPA's interpretation of ambiguous statutory provisions must be rejected as unreasonable, 467 U.S. at 843, if the agency has not "offered a reasoned explanation for why it chose that interpretation," *Village of Barrington, Ill. v. Surface Transp. Board*, 636 F.3d 650, 660 (D.C. Cir. 2011), or the interpretation "frustrate[s] the policy that Congress sought to implement," *Shays v. FEC*, 528 F.3d 914, 925 (D.C. Cir. 2008) (internal quotation marks and citation omitted).

This Court may also reverse agency action that does not directly contravene governing law if the agency acted arbitrarily and capriciously—for example, 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, [or] offered an explanation for its decision that runs counter to the evidence before the agency." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983). An agency "must cogently explain why it has exercised its discretion in a given manner" or its actions will be deemed arbitrary. *Id.* at 48. *See also Transactive Corp. v. United States*, 91 F.3d 232, 236 (D.C. Cir. 1996) (agency acted arbitrarily and capriciously when it failed to "identif[y] and explain[] the reasoned basis for its decision"). Agency actions will be held arbitrary and capricious if explanations for regulatory distinctions are "internally inconsistent," *Air Transp. Ass'n of Am. v. U.S. DOT*, 119 F.3d 38, 43 (D.C. Cir. 1997), or if the agency reached a conclusion that is "unsupported by substantial evidence." *NRDC v. Herrington*, 768 F.2d 1355, 1407 (D.C. Cir. 1985).

ARGUMENT

I. EPA UNLAWFULLY ALLOWS CERTAIN HUMAN ACTIVITY TO BE TREATED AS A NATURAL EVENT AND EXCEPTIONAL EVENT

A. EPA's Definition of "Natural Event" Contravenes the Plain Language and Structure of Section 319.

The plain language of Clean Air Act section 319 distinguishes between a "natural event" that may qualify as an "exceptional event," on one hand, and "human activity" that may be treated as an exceptional event, on the other hand, only if that activity meets statutory criteria. Section 319 defines an "exceptional event" as an "event that:

> (i) affects air quality;
> (ii) is not reasonably controllable or preventable;
> (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and
> (iv) is determined by the Administrator through the process established in the regulations … to be an exceptional event.

42 U.S.C. § 7619(b)(1)(A). EPA's rule adopts the same definition of "exceptional event," 81 Fed. Reg. at 68,276/3 (to be codified at 40 C.F.R. § 50.1(j)), JA___, but then adopts the following regulatory definition of "natural event":

> *natural event* means an event and its resulting emissions, which may recur at the same location, in which human activity plays little or no direct causal role. For purposes of the definition of a natural event, anthropogenic sources that are reasonably controlled shall be considered to not play a direct role in causing emissions.

Id. at 68,277/1, JA___. EPA's "natural event" definition violates the plain language of § 319(b)(1)(A)(iii) in multiple respects, by encompassing events in which human activities play a direct causal role.

First, the plain language of the statutory term "natural event" does not include or encompass human activity. This is confirmed by dictionary definitions of "natural" and "nature": "natural" means "of, forming a part of, or arising from nature," while "nature" means "natural scenery, including the plants and animals that are a part of it." *Webster's Deluxe Unabridged* (2d. ed. 1979). In addition, the dictionary defines an "event" to be "an occurrence, especially a significant one." *Id.* The plain meaning of the phrase "natural event," in turn, reinforces these understandings by encompassing occurrences in nature, and not human-caused activities.

Similarly, the plain language of the statutory term "human activity" does not equate to or encompass a "natural event." The dictionary defines "human" to mean "of or characteristic of a person or persons." *Id.* Additionally, "activity" is defined as "the quality or state of being active; action; motion; use of energy." *Id.* The plain language of the term "natural event" does not include human activity.

Second, section 319 creates a clear distinction between a "natural event" and an "event caused by human activity," dividing the two terms and concepts with the disjunctive conjunction, "or." 42 U.S.C. § 7619(b)(1)(A)(iii). "Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise; here it does not." *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979). Nothing in section 319 or elsewhere in the Act suggests congressional intent to give the terms connected by the disjunctive "or"—"an event caused by human activity…." or "a natural event"—the same meaning. Congress would have had no need to separately delineate "human activity" from a "natural event" in one of the four subparts of the "exceptional event" definition, if the term "natural event" were capacious enough to include human activity. "[T]he meaning of statutory language, plain or not, depends on context." *Bailey v. United States*, 516 U.S. 137, 145 (1995) (citation omitted); *see also Gutierrez v. Ada*, 528 U.S. 250, 255 (2000) ("[W]ords … are known by their companions.").

Here, the context unequivocally establishes that 'natural events' cannot be understood to include 'human activities.' Indeed, not even EPA's final rule pretends that "an event caused by human activity" and "a natural event" are identical. EPA's contravention of plain statutory language and the disjunctive "or"

is selective: if 100% of emissions ("all") that violate a health standard originated from controlled human activities, EPA does not treat the event as a natural event.[7] If less than 100% of emissions that violate a health standard originated from controlled human activities, EPA's final rule does allow the event to be treated as a natural event.[8] Moreover, even after collapsing the statutory distinction between human activity and natural events selectively, EPA makes clear there are actual natural events that it does not consider to have any human influence. *See, e.g.*, 81 Fed. Reg. at 68,232/1, JA___ ("EPA generally considers wildfires, …volcanic and seismic [] activity… to be natural events.").

The final rule violates the plain language of section 319 in other respects. Congress placed explicit conditions on human activity that may be treated as an "exceptional event": only human activity that is "unlikely to recur at a particular location" may even be considered for treatment as an exceptional event. 42 U.S.C. § 7619(b)(1)(A)(iii). Human activity that is likely to recur (or that does recur) at a particular location may not even be considered for potential treatment as an

[7] *See* 81 Fed. Reg. at 68,231/3, JA___ ("Additionally, the event would *not* be natural if *all* of the event-related emissions originated from anthropogenic sources.") (2nd emphasis added).
[8] *See id.* at 68,231/1, JA___ ("This is the case regardless of the magnitude of emissions generated by these reasonably controlled anthropogenic sources and regardless of the relative contribution of these emissions and emissions arising from natural sources in which human activity has no role.").

exceptional event. EPA's final rule squarely contravenes this congressional restriction. It allows reasonably controlled human activity "which may recur at the same location" to be treated as a "natural event" and thereby to bypass the "unlikely to recur" restriction Congress placed on human activity. 81 Fed. Reg. at 68,277/2, JA___.

The final rule's treatment of some human activity as a natural event violates the plain language of section 319 in yet another way. Congress defined an "exceptional event" to be an event that "is not reasonably controllable or preventable." 42 U.S.C. § 7619(b)(1)(A)(ii). EPA's final rule contravenes this explicit congressional prohibition by defining a natural event to encompass human activities that "are reasonably controlled." *Id.* The final rule thus dispenses with the condition that a permissible exceptional event must not be "reasonably. . . preventable." *Id.* EPA makes clear that an acceptable exceptional event is determined by whether human activity is "reasonably controlled," not by the entirely separate condition and question, whether it was "reasonably preventable."[9]

[9] *Id.* at 68,231/2-3, JA__ ("we believe that if reasonable controls were implemented on contributing anthropogenic sources at the time of the event and if, despite these efforts and controls, an exceedance occurred, then we would consider the human activity to have played little or no direct causal role in causing the event-related exceedance. Rather, in those cases in which the anthropogenic source has 'little' direct causal role, we would consider the high wind and the emissions arising from the contributing natural sources (in which human activity has no role) to cause the exceedance or violation.").

The final rule thus invents a non-textual factor under 42 U.S.C. § 7619(b)(1)(A)*(iii)*—'reasonably controlled human activity shall be considered to not play a direct role in causing emissions'—that alters and contravenes § 7619(b)(1)(A)*(ii)*, where Congress spoke directly to the question of qualifying exceptional events: they must not be "reasonably controllable or preventable." "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *TRW, Inc. v. Andrews*, 534 U.S. 19, 28 (2001) (internal quotation marks and citation omitted). In the Clean Air Act, Congress requires monitored exceedances of air quality standards to count toward an area's (non)attainment status, and subsequent pollution control measures and obligations. *See, e.g.*, 42 U.S.C. §7502. Congress detailed narrow exclusions from that general rule with section 319 exceptional events, but there is no textual or other evidentiary basis of a contrary legislative intent to delegate authority to EPA to imply additional and different exclusions.

Under EPA's final rule, an industrial activity that is likely to recur and does recur at the same location—so long as it is "reasonably controlled"—may qualify as an exceptional event. The plain language of the Clean Air Act prohibits this: an exceptional event must be "an event caused by human activity that is unlikely to

recur at a particular location." The final rule thus allows emissions caused by human activities (<100%) to violate public health standards without meeting the statutory constraints on emissions from human activity.

EPA did not and could not claim in the final rule that its natural event definition followed the plain language of the statute. EPA did not argue that human activity carried out the plain language of "natural event." EPA did not claim that human activities treated as natural events represent the type of natural events Congress specified in 42 U.S.C. § 7619(b)(1)(B)'s exclusions or section 319's legislative history.

EPA did not argue that 'reasonably controlled human activity *that may recur* at the same location' was consistent with the plain statutory language of "an event caused by human activity *that is unlikely to recur* at the same location." EPA did not identify any role for 'reasonably controlled human activity' in the plain meaning of "natural event." EPA did not argue that 'reasonably controlled human activity' was consistent with any inquiry into the plain language of whether an event was "reasonably preventable."

The Agency does not dispute that excluded events and emissions that result from human activity may be likely to recur at "a particular location." Indeed, the Agency's own regulation makes the recurrence of human activity at a particular

location permissible and *expected*. 81 Fed. Reg. at 68,277/1, JA___ ("which may recur at the same location"). EPA makes clear that a human activity qualifying as a natural event turns on whether that human activity is "reasonably controlled"—not whether the activity recurs at a particular location. *Id.* at 68,231/2, JA___. This, despite that approach having no statutory basis and violating plain statutory language. Under EPA's regulation, after answering the question whether a human activity is reasonably controlled, the congressional conditions on human activity (they must be "unlikely to recur at a particular location") cease to be relevant.

EPA effectively concedes that its regulatory definition of "natural event"—and its inclusion of human activity as a natural event—contravenes the plain language of 42 U.S.C. § 7619(b)(1)(A)(iii). In its Response to Comments, EPA admitted that "Congress included both 'human activities' and 'natural event[s]' as *separate activities* within an exceptional event." Response to Comments, at 34, JA__. The final rule thus fails the first step of *Chevron*. "[T]he intent of Congress is clear," and that should be "the end of the matter." *Chevron*, 467 U.S. at 842-43.

EPA also effectively concedes that the "natural event" definition contravenes the plain language of 42 U.S.C. § 7619(b)(1)(A)(iii) by sanctioning the recurrence of anthropogenic activity and emissions. *See, e.g.*, 81 Fed. Reg. at 68,231/2, JA__ ("an event and its resulting emissions, which may recur at the same

location."). The Agency admits that Congress did not intend recurring human activity at a particular location, or even likely recurring human activity, to qualify as an exceptional event: "The concept of recurrence (*i.e.*, human activity *that is unlikely to recur at a particular location* or a natural event" (emphasis added)) applies specifically to human activities and not to natural events." Response to Comments, at 35, JA___. EPA may not evade plain statutory language and escape its own admission with a regulatory definition of "natural event" that encompasses human activity. Again, the final rule fails *Chevron* Step One. "[T]he intent of Congress is clear," and that should be "the end of the matter." *Chevron*, 467 U.S. at 842-43.

Lacking any statutory basis for the challenged elements of the natural event definition, EPA instead argues that a 1996 EPA "memorandum" justifies the Agency's approach because Congress required use of previous EPA guidance "until the effective date" of its 2007 rule. Response to Comments, at 34, JA__. EPA is referring to a policy document that discusses an entirely different part of the Clean Air Act, section 188(f). Under the plain language of 42 U.S.C. §§ 7619(b)(4) and (b)(2)(B), this EPA policy document no longer applies after the May 21, 2007 effective date of the exceptional event regulation that EPA promulgated in March of 2007. 81 Fed. Reg. 68,219/3, JA___; 40 C.F.R. §50.1.

EPA concedes this, but then does not and cannot explain how a policy document from 1996 relating to a different section of the Clean Air Act—combined with the congressional directive that it cease to apply after the effective date of the initial implementing regulation—supplies EPA today with any authority to contravene plain statutory language in the ways described above. 81 Fed. Reg. at 68,220/2-3, JA___.

Ducking this dilemma, EPA instead dives into the content of the 1996 memorandum that Congress said applied only "until the effective date" of the regulation that EPA promulgated in 2007. The Agency takes away from that memorandum two points: (1) that the guidance allowed dust due to high winds to be treated as natural events when "the dust originated from anthropogenic sources controlled with best available control measures"; and (2) that "there is not always a bright line that excludes all anthropogenic activity from a "natural event." *Id.*

EPA may not seek refuge in these two arguments from an expired guidance as a justification for contravening plain statutory language from a different section of the Act section 319. First, whatever EPA believed in a 1996 guidance about section 188(f), in section 319(b)(1)(A)(iii), Congress prescribed a bright line between "human activity that is unlikely to recur at a particular location" and "a natural event" using plain statutory language in 2005. Then in § 7619(b)(1)(A),

Congress drew additional clear distinctions between human activity and natural events. 42 U.S. § 7619(b)(1)(A). That plain statutory language indicates Congress excluded human activity from the concept of a natural event.

Second, even though Congress was fully aware of the "best available control measure" concept and how EPA employed it in the 1996 guidance, Congress excluded that approach from the Act. There is no indication that Congress intended to allow the concept to qualify human activity as a natural event under section 319. The interim, expiring nature of the EPA guidance and its reference to a different provision of the Act only reinforces that statutory exclusion with clear congressional intent. 42 U.S.C. §§ 7619(b)(2)(B) & (b)(4). While EPA may believe the 1996 guidance supports its decision to contravene plain statutory language, the careful congressional approach to the superseded EPA guidance fully cuts again the Agency. "[T]he intent of Congress is clear," and that should be "the end of the matter." *Chevron*, 467 U.S. at 842-43.

The statutory design of section 319 further underscores the narrow, limited scheme Congress envisioned when it created the exceptional events provisions. *See Bailey*, 516 U.S. at 145 (citation omitted) ("The meaning of statutory language, plain or not, depends on context."). Congress required EPA to follow five principles when promulgating exceptional event regulations. *See* 42 U.S.C. §

7619(b)(3)(A). Three of the five principles emphasize the paramount importance of public health, with the first congressional statement setting forth "the principle that protection of public health is the highest priority." *Id.* at § 7619(b)(3)(A)(i). This is entirely logical for a program that determines whether violations of public health standards for air quality will be excused without the entire architecture of Clean Air Act title I applying to those violations. The other two congressional principles address the availability and public access to monitored air pollution data. *Id.*

A further feature of the statutory structure of section 319 reinforces the unlawfulness of EPA's final rule. In 42 U.S.C. § 7619(b)(3)(B), Congress prescribed specific exclusions from the term "exceptional event." Significantly, two of those specified exclusions address natural events, *id.* § 7619(b)(3)(B)(i) & (ii), and the third relates to human activity, § 7619(b)(3)(B)(iii). Here too, Congress knows how to draw purposeful distinctions between natural events and human activity, just as Congress did in § 7619(b)(3)(A)(iii).

"Absent clear congressional delegation," EPA may not create an exemption from statutory requirements by administrative rule. *State of New York v. U.S. EPA*, 413 F.3d 3, 40-42 (D.C. Cir. 2005). "Indeed, this court has consistently struck down administrative narrowing of clear statutory mandates." *Id.* 41 (emphasis added; citation and internal quotations omitted); *see also Sierra Club v. U.S. EPA*,

294 F.3d 155, 160 (D.C. Cir. 2002) (inferring from the Clean Air Act's inclusion of certain transport-based exemptions from ozone attainment requirements "that the absence of any other exemption for the transport of ozone was deliberate"). EPA's exemption here is even more egregious than the exemption this Court struck down in *State of New York v. U. S. EPA*, because that exemption involved pollution control projects designed to *reduce* emissions. 413 F.3d at 40-41. Here, EPA is allowing violations of health-based air quality standards to be excused from Clean Air Act obligations when they result from recurring air pollution from industrial sources at the same locations.

The existence of prescribed criteria for the "exceptional event" exclusion in § 7619(b)(1)(A) and the categorical exclusions in § 7619(b)(1)(B) indicate that Congress knows how to craft exclusions when it wishes to do so. *Jackson v. Birmingham Bd. Of Educ.*, 544 U.S. 167, 193 (2005) (discussing an earlier case in which the Court "surveyed other statutes and found that 'Congress knew how to impose aiding and abetting liability when it chose to do so'") (quoting *Cent. Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164, 176 (1994))). Indeed, Congress specified only two human activities related to exceptional events: first, the inclusion of qualifying "event[s] caused by human activity that is unlikely to recur at a particular location," 42 U.S.C. § 7619(b)(1)(A)(iii), and second, the

further exclusion from these human events of "air pollution relating to source noncompliance." *Id.* § 7619(b)(1)(B). The presence of this carefully crafted regime indicates that Congress did not intend to authorize EPA to expand the universe of qualifying exceptional events to include additional and different human activities.

EPA's final rule violates the Clean Air Act and harms air quality and public health. The final rule allows violations of health-based clean air standards to be ignored—treated as excluded exceptional events—when vast amounts of criteria air pollutants from the regular, ongoing operation of industrial activities at the same location cause monitored exceedances of the health-based standards. The industrial activities need only be "reasonably controlled."

EPA's final rule allows emissions from coal-burning power plants, oil refineries, chemical plants, hazardous waste incinerators and a wide array of industrial activity to violate health-based clean air standards and be treated as exceptional events. This is very far afield from Congress's evident concern with natural events and narrowly limited human activity in section 319. EPA's final rule means unhealthy air quality will persist and evade Clean Air Act requirements that apply when an area is in nonattainment with NAAQS, when an area should be under a higher nonattainment classification, or when an area is failing to meet requirements in an attainment area. *Id.* §§ 7410, 7502, 7511-7514a.

It is important to appreciate that very large industrial activities that EPA considers to be "reasonably controlled" and eligible "natural events" still emit vast amounts of harmful air pollution. For example, Jeffrey Energy Center in St. Mary's, Kansas, a coal-burning power plant located near two declarants in this case, has pollution control equipment installed for smog-forming nitrogen oxide (NO_x) emissions. The plant still emitted approximately 6,200 tons of NO_x per year in 2015.[10]

Other coal-burning power plants have *single* boilers at multi-boiler plants equipped with pollution controls that nonetheless emit over 9,000, 8,500, and 7,700 tons per year of NO_x emissions.[11] There are single boilers, equipped with pollution controls, at other multi-boiler coal-burning power plants that still emit over 16,000, 14,500, and 12,500 tons per year of sulfur dioxide.[12] By comparison, *all* sources, both mobile and stationary, in the entirety of the District of Columbia emit less than 10,000 tons-per-year of NO_x, and less than 800 tons-per-year of sulfur dioxide.[13]

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[10] U.S. EPA, Clean Air Markets, Emissions Tracking Highlights, Table of Coal Unit Characteristics, 2016, *available at* https://www.epa.gov/airmarkets/clean-air-markets-emissions-tracking-highlights (last visited May 17, 2017) (providing data on Jeffrey Energy Center).
[11] *Id.* (providing data on Four Corners, New Madrid,and Coyote boiler units, respectively).
[12] *Id.* (providing data on Dolet Hills, Homer City, and Rockport boiler units, respectively.).
[13] *See* District Department of the Environment, District of Columbia's Ambient Air Quality Trends Report, "NOx Emissions by Sector," Oct. 2015, Part 2, pg. 15, *available at*

B. The Legislative History of Section 319 Precludes the Treatment of Human Activity as a Natural Event

The legislative history for section 319 fully supports Petitioners' reading and yields no support for EPA's natural event definition. The Conference Committee report addressing § 319 described natural events as "events which are part of natural ecological processes, which generate pollutants themselves that cannot be controlled." H.R. Rep. No. 109-203, at 1066-67. The only two examples of natural events in the report are "forest fires or volcanic eruptions." *Id.* The legislative history makes no mention of human activities as they relate to natural events. Nor is there any legislative history that supports treatment of reasonably controlled human activity as a natural event, or continuing use of the EPA guidance after the "interim" period Congress specified in § 7619(b)(4).

The Conference Committee report did discuss natural events generally in a way that further undermines EPA's regulation:

> Natural climatological occurrences such as stagnant air masses, high temperatures, or lack of precipitation *influence pollutant behavior but do not themselves create pollutants. Thus, they are not considered exceptional events.* Likewise, air pollution related to source noncompliance may not be considered an exceptional event. In contrast, events which are part of natural ecological processes, which generate pollutants themselves that cannot be controlled, qualify as exceptional events.

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https://doee.dc.gov/sites/default/files/dc/sites/ddoe/service_content/attachments/AQ%20TRENDS%20Report%20for%20DDOEwebsite_finalDraft_2014Oct29.pdf (last visited May 17, 2016).

H.R. Rep. No. 109-203, at 1066-67 (emphasis added). The conference report thus confirms that even certain natural climatological occurrences that "influence pollutant behavior"— like industrial sources—cannot themselves be understood to be an exceptional event. Such a distinction places the Agency's definition of natural event even further from the statutory scheme that Congress designed. Interpreting "natural event" even more broadly, as EPA's final regulation does, would engulf the careful lines that Congress drew to define and narrow exceptional events.

II. IF THIS CASE WERE GOVERNED BY *CHEVRON* STEP TWO, EPA'S INTERPRETATION MUST BE REJECTED AS UNREASONABLE AND ARBITRARY

A. EPA's Interpretation is Unreasonable.

EPA identifies no statutory ambiguity to justify its "natural event" definition. The Agency may not manufacture an ambiguity from the absence of a statutory definition for "natural event," because the "lack of a statutory definition does not render a term ambiguous." *Am. Fed'n of Gov't Employees v. Glickman*, 215 F.3d 7, 10 (D.C. Cir. 2000).

Here EPA's rule allows human activities and their emissions to qualify as natural events without those activities abiding by the restrictions Congress imposed

on human activities, and by contravening the plain meaning of the term 'natural event.' Accordingly, assuming *arguendo* that this statutory phrase is "ambiguous as applied to some situations," *Ass'n. of Battery Recyclers v. U.S. EPA*, 208 F.3d 1047, 1056 (D.C. Cir. 2000), it is not ambiguous as to the situation at issue here. Because EPA has offered no "strong structural or contextual evidence" for its exemption, *see U.S. Telecom Ass'n. v. FCC*, 359 F.3d 554, 592 (D.C. Cir. 2004), that exemption is unreasonable under *Chevron* Step Two.

EPA argues that a 1996 Agency guidance document justifies a regulatory approach that contravenes plain statutory language. Even if the final rule does not fail *Chevron* Step One, EPA's rule cannot withstand review under *Chevron* Step Two. Under that caselaw, this Court should reject an agency interpretation that "diverges from any realistic meaning of the statute." *Com. of Mass. v. U.S. DOT*, 93 F.3d 890, 893 (D.C. Cir. 1996) (emphasis added) (agency interpretation rejected). *Accord*, *NRDC v. Daley*, 209 F.3d 747, 753 (D.C. Cir. 2000) (striking down interpretation under Step Two). For example, as this Court held in *U.S. Telecom Ass'n v. FCC*, "[e]ven under the deferential *Chevron* standard of review, an agency cannot, absent strong structural or contextual evidence, exclude from coverage certain items that clearly fall within the plain meaning of a statutory term." 359 F.3d at 592. EPA has identified no such evidence here.

Indeed, EPA relies upon the 1996 guidance document to a surprising degree that cuts decisively against the Agency's position: Congress dictated that it shall not apply after the effective date of the initial exceptional event regulation. 42 U.S.C. § 7619(b)(4). Congress consciously omitted the 'best available control measure' feature that EPA now seeks to rely upon, 42 U.S.C. § 7619(b)(1), and Congress used plain statutory language that contradicts EPA's argument ("not reasonably controllable or preventable"), *id.* § 7619(b)(1)(A)(ii).

An agency's interpretation "cannot render nugatory restrictions that Congress has imposed." *AFL-CIO v. Chao*, 409 F.3d 377, 384 (D.C. Cir. 2005). Here, EPA's interpretation nullifies § 7619(b)(1)(A)(iii)'s "unlikely to recur at a particular location" language, the statutory disjunction between "human activity" and "natural event," and § 7619(b)(1)(A)(ii)'s "reasonably. . . preventable" language. It is well-established that the "range of permissible interpretations of a statute is limited by the extent of its ambiguity," and this Court will reject an agency interpretation that "diverges from any realistic meaning of the statute." *Mass. v. U.S. Dep't of Transp.*, 93 F.3d at 893.

In explaining its definition, EPA hewed closely to conclusory statements like "EPA believes the interpretation… implements the Congressional intent," without more. 81 Fed. Reg. at 68,231/1, JA__ (discussing wildfires). The Agency indicated

that only if "all of the event-related emissions originated from anthropogenic sources or if anthropogenic emission sources that contributed to the event-related emissions could have been reasonably controllable but reasonable controls were not implemented at the time of the event," would the event be considered "*not* natural." *Id.* at 68,231/3, JA__ (emphasis in original).

Under *Chevron* Step Two, "[a] reasonable explanation of how an agency's interpretation serves the statute's objectives is the stuff of which a permissible construction is made; an explanation that is arbitrary, capricious, or manifestly contrary to the statute, however, is not." *Northpoint Technology v. FCC*, 412 F.3d 145, 151 (D.C. Cir. 2005) (citation and internal quotations omitted). Here, EPA advanced no reasoned explanation for how its rule serves the statute's objectives. To the contrary, EPA admitted that "Congress included both 'human activities' and 'natural event[s]' as *separate activities* within an exceptional event." Response to Comments, 34, JA___ (emphasis added). EPA's sole explanation for its regulatory preference relies upon a 1996 guidance document that Congress made clear shall not apply to the instant rulemaking,[14] a guidance that even EPA admits has been

[14] U.S. EPA, Areas Affected by PM–10 Natural Events memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, to the EPA Regional offices, May 30, 1996, Docket No. EPA-HQ-OAR-2013-0572-0020, JA___.

superseded. 81 Fed. Reg. at 68,220/1, JA__. EPA offers no explanation for these internal inconsistencies, much less a reasoned one. This inconsistency is yet another reason for rejecting EPA's interpretation. *See*, *e.g.*, *Air Transp. Assn. v. U.S. DOT*, 119 F.3d at 43 (vacating regulation: "the most serious logical problem with [the] regulation—which we simply cannot accept," is that the Agency's explanation "is internally inconsistent"). The Agency's solitary explanation thus fails to supply the reasoned explanation that this Court requires. *See Northpoint Technology v. FCC*, 412 F.3d at 151.

Monitored air pollution exceedances that comprise both natural and anthropogenic sources require an approach consistent with the Clean Air Act. Rather than throwing out the entire monitored exceedance as an "exceptional event," and undermining the regulatory structure of the NAAQS and Clean Air Act title I along with it, government officials should do what they do now—undertake an inquiry into the data on a case-by-case basis. Agencies may adjust the data, as warranted, to exclude any portion attributable to an exceptional event consistent with the narrow manner in which Congress defined that concept. Agencies may determine whether the remaining portions from industrial and other recurring human activities nonetheless would have caused a violation, without collapsing the concepts of human activities and natural events into one unlawful combination.

B. EPA Has Substituted Its Own Agenda for Congress's.

Even where an agency's interpretation "may be linguistically possible" for the sake of argument, that interpretation will be rejected if it "is not a permissible construction of the statute in light of its structure and purposes." *Tax Analysts v. IRS*, 117 F.3d 607, 616 (D.C. Cir. 1997). In particular, an agency's interpretation will fail *Chevron* Step Two where "the agency seeks to exploit the ambiguity rather than resolve it, and to advance its own policy goals rather than Congress'." *NRDC v. Reilly*, 976 F.2d 36, 44 (D.C. Cir. 1992) (Silberman, J., concurring).

Here, EPA has substituted its own agenda for Congress's. The Agency's regulation contradicts the clear separation of human activity and a natural event under plain statutory language. 42 U.S.C. §7619 (b)(1)(A)(iii). EPA concedes this: "Congress included both 'human activities' and 'natural event[s]' as *separate activities* within an exceptional event." Response to Comments, 34, JA__ (emphasis added). EPA substitutes its policy preference for the 'best available control measure' approach in the 1996 agency guidance and displaces the careful congressional design that did not adopt this approach, either explicitly or implicitly. Worse for EPA's agenda, Congress rejected the approach by not allowing it to apply after the effective date of initial Agency regulations, May 21, 2007, *id.*, and Congress adopted language that contradicts that approach ("not

reasonably controllable or preventable"). 42 U.S.C. §7619 (b)(1)(A)(ii). EPA's preferred interpretation "is not a permissible construction of the statute in light of its structure and purposes." *Tax Analysts v. IRS,* 117 F.3d at 616.

Finally, assuming *arguendo* EPA has discretion to define a natural event to include an event in which "human activity plays little or no direct causal role," the final rule is so vague, malleable and expansive as to be arbitrary and capricious. 81 Fed. Reg. at 68,231/2, JA___. The human activity deemed by EPA to constitute natural events exemplifies these defects: human activities may play *any* percentage of a direct causal role in these events less than 100%, so long as they are "reasonably controlled." *Id.* If there is *some* component that is from a "natural source," the Agency allows the anthropogenic emissions to be recast as having "little or no direct causal role," and for its pollution contributions and resulting health violations to be excluded. *Id.* The entire human activity and its emissions then would meet EPA's definition of natural event, qualifying for treatment as an exceptional event. This demonstrates that the definition's putative limitation on human activity ("little or no direct causal role") is meaningless as implemented in the actual regulation ("emissions . . . that are reasonably controlled do not play a 'direct' role in causing emissions"), and as interpreted by EPA. *See supra* at 15-17, 28-30 (discussing EPA's treatment of NAAQS-violating anthropogenic emissions

as a natural event if they are anything less than 100% of the contributing emissions).

For all of the above reasons, EPA's rule is "unreasonable" under *Chevron* Step Two as well as arbitrary and capricious.

CONCLUSION

For the foregoing reasons, the Court should vacate the final exceptional event rule's definition of "natural event."

Dated: May 19, 2017

Respectfully submitted,

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CERTIFICATE REGARDING WORD LIMITATION

This brief complies with the type-volume limitation of Circuit Rule 32(a)(7)(B) because this brief contains less than 13,000 words (as counted by counsel's word processing system), and thus complies with the applicable word limit established by the Court.

Dated: May 19, 2017

/s/ John D. Walke
John D. Walke

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2017, I have served the foregoing **Proof Opening Brief of Environmental Petitioners and Addendum** on all registered counsel through the court's electronic filing system (ECF).

/s/ John D. Walke___
John D. Walke

ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-1413

NATURAL RESOURCES DEFENSE COUNCIL and SIERRA CLUB

Petitioners,

v.

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

Respondents.

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

ADDENDUM TO THE PROOF OPENING BRIEF OF ENVIRONMENTAL PETITIONERS

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Counsel for Sierra Club

Dated: May 19, 2017

DECLARATIONS

TABLE OF CONTENTS

DECLARATION OF HUDA FASHHO

I, Huda Fashho, declare as follows:

1. I am the Associate Director of Member Services at the Sierra Club. I have had this position for six years.

2. The Sierra Club is a non-profit membership organization incorporated under the laws of the state of California.

3. In this role, I manage the Sierra Club's customer service functions related to its members, including maintaining an accurate list of members and managing the organization's member databases.

4. When an individual becomes a member of the Sierra Club, his or her current residential address is recorded in our membership database. The database entry reflecting the member's residential address is verified or updated as needed.

5. Sierra Club's mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

6. The Sierra Club's activities include public education, advocacy, and litigation to enforce environmental laws, including those that protect air quality. For decades, Sierra Club has worked to enact, strengthen, and enforce the Clean

Air Act and its regulations to reduce air pollution in the United States. That work includes efforts to reduce emissions of air pollutants such as particulate matter and ozone levels, in part through the Clean Air Act's pollution-reduction requirements.

7. The Sierra Club currently has 744,345 members nationwide.

8. Below is a list of the number of current Sierra Club members in the following counties; I am informed that states have, in the past, claimed that "exceptional events" excuse violations of air quality standards that would otherwise apply within these counties.

a. Maricopa County , AZ: 6,351

b. Imperial County, CA: 65

c. Sedgwick County, KS: 635

d. Shawnee County, KS: 366

e. Wyandotte County, KS: 148

f. Clark County, NV: 2,225

g. Utah County , UT: 223

h. Salt Lake County, UT: 2,553

i. Sublette County, WY: 10

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Oakland, California on April 28, 2017.

Huda Fashho

DECLARATION OF BEVERLY JANOWITZ-PRICE

I, Beverly Janowitz-Price, hereby declare as follows:

1. I am currently a member of the Natural Resources Defense Council ("NRDC"). I have been a member for 12 years.

2. I live in Phoenix, Arizona, in Maricopa County. I have lived at my current address for 7 years and in Arizona for 50 years.

3. When the air quality in my community is poor, it is noticeable to me. My office is near the Superstition Mountains, which I can see clearly when the air quality is good. On poor air quality or windy days, my view of the mountains is obscured. In my experience, there are more days now when it is difficult to see the peaks of the mountains than in the past.

4. I am a cancer survivor. Accordingly I am very concerned about air pollution and other forms of pollution that impact public health. I also have allergies, which I've been told may be allergies related to pollution. I participate in a citizens group, and one of the other members is a nurse. She has given me a lot of information about air quality and how it affects the health of our community.

5. I am aware from published reports that inhaling elevated concentrations of particulate matter and ozone pollution can cause immediate injury to a person, as well as increase that person's risk of developing serious and even life-threatening illnesses. For these reasons, I am very concerned about the health threat posed to my

health and the health of my family and community by particulate pollution and ozone pollution.

6. I believe that the regulation of particulate pollution and ozone pollution will help reduce the amount of air pollution to which I am exposed. I am concerned that if the U.S. EPA weakens air quality standards or rules enforcing these standards, that there will be a negative impact on my health and the health of my community. I support litigation by NRDC to ensure that requirements of the Clean Air Act for controlling air pollution like particulate pollution and ozone pollution are fully and expeditiously implemented so as to protect my health.

I declare that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed in Phoenix, Arizona on May 2, 2017

Beverly Janowitz-Price

Beverly Janowitz-Price

I, Elvera W. (Ellie) Skokan, state that:

1. I reside at 5825 Memphis, Bel Aire, Sedgwick County, Kansas, a suburb of the city of Wichita, Kansas.

2. I have been a member of the Sierra Club since 1975, and currently serve as a member of the Air Quality Committee of the Kansas Chapter of the Sierra Club.

3. I am an active retiree and take daily walks, ride a bicycle during the warmer months and perform yardwork, including mowing and gardening. Since many of these activities occur during times of high levels of air pollution, particularly in March and April during the Kansas Flint Hills burning season, I'm concerned about the possible effects such activities could be having on my long-term health. In recent years, as the ozone pollution has received more publicity in my area, I am aware of the possible risks of outdoor activities, particularly to older residents during periods of high ozone concentration. As advised, I try to limit my outdoor activities to morning hours.

4. I am also aware that ozone levels in the Wichita Metropolitan Statistical Area (WMSA) have frequently exceeded EPA's health-based standards as a result of human-caused burning of grasslands in the Kansas Flint Hills. This has occurred within the same two-week period in April of 2009, 2010, 2011, 2014 and 2016. Since 2010, the Environmental Protection Agency (EPA) has exempted these exceedances as "exceptional events," as defined by EPA.

5. If these air-pollution events continue to be accepted as "exceptional events," the WMSA is unlikely to undertake any further effort to reduce ozone pollution, is likely to remain in attainment of EPA's ozone air-quality standards indefinitely, and

it will not be required to comply with the stringent pollution-reduction requirements prescribed by the Clean Air Act for non-attainment areas. The exceptional events exception thus subjects me, and other WMSA residents, to increased air pollution.

6. As a resident of the WMSA, I find this allowance of non-compliance unacceptable. The EPA should require Kansas to reduce the ozone pollution, including pollution resulting from the human-caused, intensive grassland burning in the Kansas Flint Hills that frequently causes exceedances in the Wichita area.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 4/27, 2017, by

Elvera W Skokan

Elvera W. Skokan

DECLARATION OF GINA TRUJILLO

I, Gina Trujillo, declare as follows:

1. I am the Director of Membership at the Natural Resources Defense Council, Inc. ("NRDC"). I have been the Director of Membership since January 1, 2015 and have worked at NRDC for over 25 years.

2. My duties include supervising the preparation of materials that NRDC distributes to members and prospective members. Those materials describe NRDC and identify its mission.

3. NRDC is a membership organization incorporated under the laws of the State of New York. It is recognized as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.

4. NRDC's mission statement declares that "The Natural Resources Defense Council's purpose is to safeguard the Earth; its people, its plants and animals, and the natural systems on which all life depends." The mission statement goes on to declare that NRDC works "to restore the integrity of the elements that sustain life—air, land, and water—and to defend endangered natural places."

5. When an individual becomes a member of NRDC, his or her current residential address is recorded in NRDC's membership database. When a member renews his or her membership or otherwise makes a contribution to NRDC, the database entry reflecting the member's residential address is verified or updated.

6. Since its inception in 1970, NRDC has worked on issues relating to clear air and climate change. In particular, protecting its members and the public from the substantial adverse health effects and harm caused by toxic air pollution and exposure to polluted air is central to NRDC's purpose. NRDC brings cases to protect its members from harm caused by air pollution. NRDC also carries out education and advocacy to inform its members and the public about the harms to both human health and the environment from air pollution.

7. NRDC currently has more than 346,000 members. There are NRDC members residing in each of the 50 United States and in the District of Columbia. NRDC has 2,159 members in Kansas, and 6,034 members in Arizona.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on May 19, 2017.

Gina Trujillo

I, Craig Volland, state that:

1. I reside at 609 N. 72nd Street, in Wyandotte County, Kansas, within the Kansas City metropolitan area.

2. I have been a member of the Sierra Club since 1995 and currently serve as the Chair of the Air Quality Committee of the Kansas Chapter of the Sierra Club.

3. I enjoy the outdoors, and regularly participate in outdoor activities, such as walking and gardening. In fact I walk about 3/4 miles over hilly terrain almost every day. I also live about 1/4 mile from, and downwind of, a major interstate freeway. I am elderly and understand that this highway exposure plus any heavy regional air pollution are likely to cause long-term impacts to my health.

4. I am aware from published reports that ozone pollution may pose serious health risks, and that ozone levels in the Kansas City metropolitan area have in the past exceeded EPA's health-based standards as a result of human-caused burning of grasslands in the Kansas Flint Hills. Since 2010, the Kansas Department of Health and Environment has routinely claimed that these types of exceedances in Kansas are "exceptional events," as defined by EPA. However this planned, heavy burning occurs every year within a one-month period in late March and the first three weeks of April, hardly an exception.

5. In 2016, the Kansas City metro area suffered five summer exceedances of the ozone NAAQS including two in Wyandotte County where I live. Because of EPA's Exceptional Events rule, the Greater Kansas City Metropolitan Air Quality Maintenance Area is likely in the future to remain in attainment of EPA's ozone air-quality standards, rather than being required to comply with the stringent

pollution-reduction requirements prescribed by the Clean Air Act for non-attainment areas.

6. Were EPA to remove or alter the Exceptional Events rule, Kansas would likely have to take stronger steps to reduce ozone pollution resulting from intensive grassland burning in Eastern Kansas that sometimes affects the Kansas City metropolitan area, either to avert a non-attainment designation, or in response to such a designation.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on May 10, 2017 by

Craig S. Volland

STATUTES AND REGULATIONS

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AUTHORITY **PAGE**

STATUTES

United States Code Annotated
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)

42 U.S.C.A. § 7401

§ 7401. Congressional findings and declaration of purpose

Currentness

(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 control 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.)

Notes of Decisions (49)

42 U.S.C.A. § 7401, 42 USCA § 7401
Current through P.L. 115-30.

End of Document

United States Code Annotated
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)

42 U.S.C.A. § 7407

§ 7407. Air quality control regions

Effective: January 23, 2004
Currentness

(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; 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.)

Notes of Decisions (56)

42 U.S.C.A. § 7407, 42 USCA § 7407
Current through P.L. 115-30.

End of Document

United States Code Annotated
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)

42 U.S.C.A. § 7409

§ 7409. National primary and secondary ambient air quality standards

Currentness

(a) Promulgation

(1) The Administrator--

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

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

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

(b) Protection of public health and welfare

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

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

(c) National primary ambient air quality standard for nitrogen dioxide

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO_2 concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 7408(c) of this title, he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

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

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

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

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

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

CREDIT(S)

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

Notes of Decisions (83)

42 U.S.C.A. § 7409, 42 USCA § 7409
Current through P.L. 115-30.

End of Document

United States Code Annotated
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)

42 U.S.C.A. § 7410

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

Currentness

(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 revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under 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 promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

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

(4) Repealed. 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 increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

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

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

(A) meets the requirements of this section, and

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

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

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

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 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 at such source will enable it 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 November 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 [1] 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; 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.)

Notes of Decisions (365)

Footnotes

1 So in original. Probably should be followed by a comma.

42 U.S.C.A. § 7410, 42 USCA § 7410

Current through P.L. 115-30.

End of Document

United States Code Annotated
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)

42 U.S.C.A. § 7502

§ 7502. Nonattainment plan provisions in general

Currentness

(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 appropriate, 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 expeditiously 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 aggregate, 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; 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.)

Notes of Decisions (51)

42 U.S.C.A. § 7502, 42 USCA § 7502
Current through P.L. 115-30.

End of Document

United States Code Annotated
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 2. Additional Provisions for Ozone Nonattainment Areas (Refs & Annos)

42 U.S.C.A. § 7511

§ 7511. Classifications and attainment dates

Currentness

(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 *	Primary standard attainment date **
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

(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 nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the

Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) 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 [1] "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.)

Notes of Decisions (20)

Footnotes

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

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

1 So in original. Probably should be "terms".

42 U.S.C.A. § 7511, 42 USCA § 7511

Current through P.L. 115-30.

End of Document

United States Code Annotated
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 2. Additional Provisions for Ozone Nonattainment Areas (Refs & Annos)

42 U.S.C.A. § 7511a

§ 7511a. Plan submissions and requirements

Currentness

(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 [1] (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 implementation 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[2] 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 [3] 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) [4] 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 [5] (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 [6] (6),

(7) and (8) of subsection (c) of this section (relating to de minimus [7] 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 [8] (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 oxides of nitrogen would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

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

The Administrator shall, in the Administrator's determinations, consider the study required under section 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 reduce 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; amended Dec. 23, 1995, Pub.L. 104-70, § 1, 109 Stat. 773.)

Notes of Decisions (23)

Footnotes

1 So in original. Probably should be "subparagraph".
2 So in original. Probably should be section "7625".
3 So in original. Probably should be "increased".
4 So in original. No subpar. (B) has been enacted.
5 So in original. Probably should be "subsections".
6 So in original. Probably should be "paragraphs".
7 So in original. Probably should be "de minimis".
8 So in original. Probably should be "include".

42 U.S.C.A. § 7511a, 42 USCA § 7511a
Current through P.L. 115-30.

United States Code Annotated
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 2. Additional Provisions for Ozone Nonattainment Areas (Refs & Annos)

42 U.S.C.A. § 7511b

§ 7511b. Federal ozone measures

Currentness

(a) Control techniques guidelines for VOC sources

Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines, in accordance with section 7408 of this title, for 11 categories of stationary sources of VOC emissions for which such guidelines have not been issued as of November 15, 1990, not including the categories referred to in paragraphs (3) and (4) of subsection (b) of this section. The Administrator may issue such additional control techniques guidelines as the Administrator deems necessary.

(b) Existing and new CTGS

(1) Within 36 months after November 15, 1990, and periodically thereafter, the Administrator shall review and, if necessary, update control technique guidance issued under section 7408 of this title before November 15, 1990.

(2) In issuing the guidelines the Administrator shall give priority to those categories which the Administrator considers to make the most significant contribution to the formation of ozone air pollution in ozone nonattainment areas, including hazardous waste treatment, storage, and disposal facilities which are permitted under subtitle C of the Solid Waste Disposal Act [42 U.S.C.A. § 6921 et seq.]. Thereafter the Administrator shall periodically review and, if necessary, revise such guidelines.

(3) Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines in accordance with section 7408 of this title to reduce the aggregate emissions of volatile organic compounds into the ambient air from aerospace coatings and solvents. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds into the ambient air from the application of such coatings and solvents to such level as the Administrator determines may be achieved through the adoption of best available control measures. Such control technology guidance shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of such control technology guidance. In developing control technology guidance under this subsection, the Administrator shall consult with the Secretary of Defense, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration with regard to the establishment of specifications for such coatings. In evaluating VOC reduction strategies, the guidance shall take into account the applicable requirements of section 7412 of this title and the need to protect stratospheric ozone.

(4) Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines in accordance with section 7408 of this title to reduce the aggregate emissions of volatile organic compounds and PM-10 into the ambient air from paints, coatings, and solvents used in shipbuilding operations and ship repair. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds and PM-10 into the ambient air from the removal or application of such paints, coatings, and solvents to such level as the Administrator determines may be achieved through the adoption of the best available control measures. Such control techniques guidelines shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of such control technology guidance. In developing control techniques guidelines under this subsection, the Administrator shall consult with the appropriate Federal agencies.

(c) Alternative control techniques

Within 3 years after November 15, 1990, the Administrator shall issue technical documents which identify alternative controls for all categories of stationary sources of volatile organic compounds and oxides of nitrogen which emit, or have the potential to emit 25 tons per year or more of such air pollutant. The Administrator shall revise and update such documents as the Administrator determines necessary.

(d) Guidance for evaluating cost-effectiveness

Within 1 year after November 15, 1990, the Administrator shall provide guidance to the States to be used in evaluating the relative cost-effectiveness of various options for the control of emissions from existing stationary sources of air pollutants which contribute to nonattainment of the national ambient air quality standards for ozone.

(e) Control of emissions from certain sources

(1) Definitions

For purposes of this subsection--

(A) Best available controls

The term “best available controls” means the degree of emissions reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.

(B) Consumer or commercial product

The term “consumer or commercial product” means any substance, product (including paints, coatings, and solvents), or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of volatile organic compounds. The term

does not include fuels or fuel additives regulated under section 7545 of this title, or motor vehicles, non-road vehicles, and non-road engines as defined under section 7550 of this title.

(C) Regulated entities

The term "regulated entities" means--

(i) manufacturers, processors, wholesale distributors, or importers of consumer or commercial products for sale or distribution in interstate commerce in the United States; or

(ii) manufacturers, processors, wholesale distributors, or importers that supply the entities listed under clause (i) with such products for sale or distribution in interstate commerce in the United States.

(2) Study and report

(A) Study

The Administrator shall conduct a study of the emissions of volatile organic compounds into the ambient air from consumer and commercial products (or any combination thereof) in order to--

(i) determine their potential to contribute to ozone levels which violate the national ambient air quality standard for ozone; and

(ii) establish criteria for regulating consumer and commercial products or classes or categories thereof which shall be subject to control under this subsection.

The study shall be completed and a report submitted to Congress not later than 3 years after November 15, 1990.

(B) Consideration of certain factors

In establishing the criteria under subparagraph (A)(ii), the Administrator shall take into consideration each of the following:

(i) The uses, benefits, and commercial demand of consumer and commercial products.

(ii) The health or safety functions (if any) served by such consumer and commercial products.

(iii) Those consumer and commercial products which emit highly reactive volatile organic compounds into the ambient air.

(iv) Those consumer and commercial products which are subject to the most cost-effective controls.

(v) The availability of alternatives (if any) to such consumer and commercial products which are of comparable costs, considering health, safety, and environmental impacts.

(3) Regulations to require emission reductions

(A) In general

Upon submission of the final report under paragraph (2), the Administrator shall list those categories of consumer or commercial products that the Administrator determines, based on the study, account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer or commercial products in areas that violate the NAAQS for ozone. Credit toward the 80 percent emissions calculation shall be given for emission reductions from consumer or commercial products made after November 15, 1990. At such time, the Administrator shall divide the list into 4 groups establishing priorities for regulation based on the criteria established in paragraph (2). Every 2 years after promulgating such list, the Administrator shall regulate one group of categories until all 4 groups are regulated. The regulations shall require best available controls as defined in this section. Such regulations may exempt health use products for which the Administrator determines there is no suitable substitute. In order to carry out this section, the Administrator may, by regulation, control or prohibit any activity, including the manufacture or introduction into commerce, offering for sale, or sale of any consumer or commercial product which results in emission of volatile organic compounds into the ambient air.

(B) Regulated entities

Regulations under this subsection may be imposed only with respect to regulated entities.

(C) Use of CTGS

For any consumer or commercial product the Administrator may issue control techniques guidelines under this chapter in lieu of regulations required under subparagraph (A) if the Administrator determines that such guidance will be substantially as effective as regulations in reducing emissions of volatile organic compounds which contribute to ozone levels in areas which violate the national ambient air quality standard for ozone.

(4) Systems of regulation

The regulations under this subsection may include any system or systems of regulation as the Administrator may deem appropriate, including requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or economic incentives (including marketable permits and auctions of emissions rights) concerning the manufacture, processing, distribution, use, consumption, or disposal of the product.

(5) Special fund

Any amounts collected by the Administrator under such regulations shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available until expended, subject to annual appropriation Acts, solely to carry out the activities of the Administrator for which such fees, charges, or collections are established or made.

(6) Enforcement

Any regulation established under this subsection shall be treated, for purposes of enforcement of this chapter, as a standard under section 7411 of this title and any violation of such regulation shall be treated as a violation of a requirement of section 7411(e) of this title.

(7) State administration

Each State may develop and submit to the Administrator a procedure under State law for implementing and enforcing regulations promulgated under this subsection. If the Administrator finds the State procedure is adequate, the Administrator shall approve such procedure. Nothing in this paragraph shall prohibit the Administrator from enforcing any applicable regulations under this subsection.

(8) Size, etc.

No regulations regarding the size, shape, or labeling of a product may be promulgated, unless the Administrator determines such regulations to be useful in meeting any national ambient air quality standard.

(9) State consultation

Any State which proposes regulations other than those adopted under this subsection shall consult with the Administrator regarding whether any other State or local subdivision has promulgated or is promulgating regulations on any products covered under this part. The Administrator shall establish a clearinghouse of information, studies, and regulations proposed and promulgated regarding products covered under this subsection and disseminate such information collected as requested by State or local subdivisions.

(f) Tank vessel standards

(1) Schedule for standards

(A) Within 2 years after November 15, 1990, the Administrator, in consultation with the Secretary of the Department in which the Coast Guard is operating, shall promulgate standards applicable to the emission of VOCs and any other air pollutant from loading and unloading of tank vessels (as that term is defined in section 2101 of Title 46) which the Administrator finds causes, or contributes to, air pollution that may be reasonably anticipated to endanger public health or welfare. Such standards shall require the application of reasonably available control technology, considering costs, any nonair-quality benefits, environmental impacts, energy requirements and safety factors associated with alternative control techniques. To the extent practicable such standards shall apply to loading and unloading facilities and not to tank vessels.

(B) Any regulation prescribed under this subsection (and any revision thereof) shall take effect after such period as the Administrator finds (after consultation with the Secretary of the department [1] in which the Coast Guard is operating) necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period, except that the effective date shall not be more than 2 years after promulgation of such regulations.

(2) Regulations on equipment safety

Within 6 months after November 15, 1990, the Secretary of the Department in which the Coast Guard is operating shall issue regulations to ensure the safety of the equipment and operations which are to control emissions from the loading and unloading of tank vessels, under section 3703 of Title 46 and section 1225 of Title 33. The standards promulgated by the Administrator under paragraph (1) and the regulations issued by a State or political subdivision regarding emissions from the loading and unloading of tank vessels shall be consistent with the regulations regarding safety of the Department in which the Coast Guard is operating.

(3) Agency authority

(A) The Administrator shall ensure compliance with the tank vessel emission standards prescribed under paragraph (1)(A). The Secretary of the Department in which the Coast Guard is operating shall also ensure compliance with the tank vessel standards prescribed under paragraph (1)(A).

(B) The Secretary of the Department in which the Coast Guard is operating shall ensure compliance with the regulations issued under paragraph (2).

(4) State or local standards

After the Administrator promulgates standards under this section, no State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions from tank vessels subject to regulation under paragraph (1) unless such standard is no less stringent than the standards promulgated under paragraph (1).

(5) Enforcement

Any standard established under paragraph (1)(A) shall be treated, for purposes of enforcement of this chapter, as a standard under section 7411 of this title and any violation of such standard shall be treated as a violation of a requirement of section 7411(e) of this title.

(g) Ozone design value study

The Administrator shall conduct a study of whether the methodology in use by the Environmental Protection Agency as of November 15, 1990, for establishing a design value for ozone provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The Administrator shall obtain input from States, local subdivisions thereof, and others. The study shall be completed and a report submitted to Congress not later than 3 years after November 15, 1990. The results of the study shall be subject to peer and public review before submitting it to Congress.

(h) Vehicles entering ozone nonattainment areas

(1) Authority regarding ozone inspection and maintenance testing

(A) In general

No noncommercial motor vehicle registered in a foreign country and operated by a United States citizen or by an alien who is a permanent resident of the United States, or who holds a visa for the purposes of employment or educational study in the United States, may enter a covered ozone nonattainment area from a foreign country bordering the United States and contiguous to the nonattainment area more than twice in a single calendar-month period, if State law has requirements for the inspection and maintenance of such vehicles under the applicable implementation plan in the nonattainment area.

(B) Applicability

Subparagraph (A) shall not apply if the operator presents documentation at the United States border entry point establishing that the vehicle has complied with such inspection and maintenance requirements as are in effect and are applicable to motor vehicles of the same type and model year.

(2) Sanctions for violations

The President may impose and collect from the operator of any motor vehicle who violates, or attempts to violate, paragraph (1) a civil penalty of not more than $200 for the second violation or attempted violation and $400 for the third and each subsequent violation or attempted violation.

(3) State election

The prohibition set forth in paragraph (1) shall not apply in any State that elects to be exempt from the prohibition. Such an election shall take effect upon the President's receipt of written notice from the Governor of the State notifying the President of such election.

(4) Alternative approach

The prohibition set forth in paragraph (1) shall not apply in a State, and the President may implement an alternative approach, if--

(A) the Governor of the State submits to the President a written description of an alternative approach to facilitate the compliance, by some or all foreign-registered motor vehicles, with the motor vehicle inspection and maintenance requirements that are--

(i) related to emissions of air pollutants;

(ii) in effect under the applicable implementation plan in the covered ozone nonattainment area; and

(iii) applicable to motor vehicles of the same types and model years as the foreign-registered motor vehicles; and

(B) the President approves the alternative approach as facilitating compliance with the motor vehicle inspection and maintenance requirements referred to in subparagraph (A).

(5) Definition of covered ozone nonattainment area

In this section, the term "covered ozone nonattainment area" means a Serious Area, as classified under section 7511 of this title as of October 27, 1998.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 183, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 103, 104 Stat. 2443; amended Pub.L. 105-286, § 2, Oct. 27, 1998, 112 Stat. 2773.)

Notes of Decisions (3)

Footnotes

1 So in original. Probably should be capitalized.

42 U.S.C.A. § 7511b, 42 USCA § 7511b
Current through P.L. 115-30.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
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Subpart 2. Additional Provisions for Ozone Nonattainment Areas (Refs & Annos)

42 U.S.C.A. § 7511c

§ 7511c. Control of interstate ozone air pollution

Currentness

(a) Ozone transport regions

A single transport region for ozone (within the meaning of section 7506a(a) of this title), comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia, is hereby established by operation of law. The provisions of section 7506a(a)(1) and (2) of this title shall apply with respect to the transport region established under this section and any other transport region established for ozone, except to the extent inconsistent with the provisions of this section. The Administrator shall convene the commission required (under section 7506a(b) of this title) as a result of the establishment of such region within 6 months of November 15, 1990.

(b) Plan provisions for States in ozone transport regions

(1) In accordance with section 7410 of this title, not later than 2 years after November 15, 1990 (or 9 months after the subsequent inclusion of a State in a transport region established for ozone), each State included within a transport region established for ozone shall submit a State implementation plan or revision thereof to the Administrator which requires the following--

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

(B) implementation of reasonably available control technology with respect to all sources of volatile organic compounds in the State covered by a control techniques guideline issued before or after November 15, 1990.

(2) Within 3 years after November 15, 1990, the Administrator shall complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through vehicle refueling controls contained in section 7511a(b)(3) of this title, and such measures or such vehicle refueling controls shall be implemented in accordance with the provisions of this section. Notwithstanding other deadlines in this section, the applicable implementation plan shall be revised to reflect such measures within 1 year of completion of the study. For purposes of this section any stationary source that emits or has the potential to emit at least 50 tons per year of volatile organic compounds shall be considered a major stationary source and subject to the requirements which would be applicable to major stationary sources if the area were classified as a Moderate nonattainment area.

(c) Additional control measures

(1) Recommendations

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

(2) Notice and review

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

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

(B) commence a review of the recommendations to determine whether the control measures in the recommendations are necessary to bring any area in such region into attainment by the dates provided by this subpart and are otherwise consistent with this chapter.

(3) Consultation

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

(4) Approval and disapproval

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

(i) why any disapproved additional control measures are not necessary to bring any area in such region into attainment by the dates provided by this subpart or are otherwise not consistent with the [2] chapter; and

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

(5) Finding

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

(d) Best available air quality monitoring and modeling

For purposes of this section, not later than 6 months after November 15, 1990, the Administrator shall promulgate criteria for purposes of determining the contribution of sources in one area to concentrations of ozone in another area which is a nonattainment area for ozone. Such criteria shall require that the best available air quality monitoring and modeling techniques be used for purposes of making such determinations.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 184, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 103, 104 Stat. 2448.)

Notes of Decisions (1)

Footnotes

1 So in original. Probably should not be capitalized.

2 So in original. Probably should be “this”.

42 U.S.C.A. § 7511c, 42 USCA § 7511c

Current through P.L. 115-30.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
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42 U.S.C.A. § 7511d

§ 7511d. Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain

Currentness

(a) General rule

Each implementation plan revision required under section 7511a(d) and (e) of this title (relating to the attainment plan for Severe and Extreme ozone nonattainment areas) shall provide that, if the area to which such plan revision applies has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date, each major stationary source of VOCs located in the area shall, except as otherwise provided under subsection (c) of this section, pay a fee to the State as a penalty for such failure, computed in accordance with subsection (b) of this section, for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. Each such plan revision should include procedures for assessment and collection of such fees.

(b) Computation of fee

(1) Fee amount

The fee shall equal $5,000, adjusted in accordance with paragraph (3), per ton of VOC emitted by the source during the calendar year in excess of 80 percent of the baseline amount, computed under paragraph (2).

(2) Baseline amount

For purposes of this section, the baseline amount shall be computed, in accordance with such guidance as the Administrator may provide, as the lower of the amount of actual VOC emissions ("actuals") or VOC emissions allowed under the permit applicable to the source (or, if no such permit has been issued for the attainment year, the amount of VOC emissions allowed under the applicable implementation plan ("allowables")) during the attainment year. Notwithstanding the preceding sentence, the Administrator may issue guidance authorizing the baseline amount to be determined in accordance with the lower of average actuals or average allowables, determined over a period of more than one calendar year. Such guidance may provide that such average calculation for a specific source may be used if that source's emissions are irregular, cyclical, or otherwise vary significantly from year to year.

(3) Annual adjustment

The fee amount under paragraph (1) shall be adjusted annually, beginning in the year beginning after 1990, in accordance with section 7661a(b)(3)(B)(v) of this title (relating to inflation adjustment).

(c) Exception

Notwithstanding any provision of this section, no source shall be required to pay any fee under subsection (a) of this section with respect to emissions during any year that is treated as an Extension Year under section 7511(a)(5) of this title.

(d) Fee collection by Administrator

If the Administrator has found that the fee provisions of the implementation plan do not meet the requirements of this section, or if the Administrator makes a finding that the State is not administering and enforcing the fee required under this section, the Administrator shall, in addition to any other action authorized under this subchapter, collect, in accordance with procedures promulgated by the Administrator, the unpaid fees required under subsection (a) of this section. If the Administrator makes such a finding under section 7509(a)(4) of this title, the Administrator may collect fees for periods before the determination, plus interest computed in accordance with section 6621(a)(2) of Title 26 (relating to computation of interest on underpayment of Federal taxes), to the extent the Administrator finds such fees have not been paid to the State. The provisions of clauses (ii) through (iii) of section 7661a(b)(3)(C) of this title (relating to penalties and use of the funds, respectively) shall apply with respect to fees collected under this subsection.

(e) Exemptions for certain small areas

For areas with a total population under 200,000 which fail to attain the standard by the applicable attainment date, no sanction under this section or under any other provision of this chapter shall apply if the area can demonstrate, consistent with guidance issued by the Administrator, that attainment in the area is prevented because of ozone or ozone precursors transported from other areas. The prohibition applies only in cases in which the area has met all requirements and implemented all measures applicable to the area under this chapter.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 185, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 103, 104 Stat. 2450.)

42 U.S.C.A. § 7511d, 42 USCA § 7511d
Current through P.L. 115-30.

End of Document

United States Code Annotated
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42 U.S.C.A. § 7511e

§ 7511e. Transitional areas

Currentness

If an area designated as an ozone nonattainment area as of November 15, 1990, has not violated the national primary ambient air quality standard for ozone for the 36-month period commencing on January 1, 1987, and ending on December 31, 1989, the Administrator shall suspend the application of the requirements of this subpart to such area until December 31, 1991. By June 30, 1992, the Administrator shall determine by order, based on the area's design value as of the attainment date, whether the area attained such standard by December 31, 1991. If the Administrator determines that the area attained the standard, the Administrator shall require, as part of the order, the State to submit a maintenance plan for the area within 12 months of such determination. If the Administrator determines that the area failed to attain the standard, the Administrator shall, by June 30, 1992, designate the area as nonattainment under section 7407(d)(4) of this title.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 185A, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 103, 104 Stat. 2451.)

42 U.S.C.A. § 7511e, 42 USCA § 7511e
Current through P.L. 115-30.

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42 U.S.C.A. § 7511f

§ 7511f. NO_x and VOC study

Currentness

The Administrator, in conjunction with the National Academy of Sciences, shall conduct a study on the role of ozone precursors in tropospheric ozone formation and control. The study shall examine the roles of NO_x and VOC emission reductions, the extent to which NO_x reductions may contribute (or be counterproductive) to achievement of attainment in different nonattainment areas, the sensitivity of ozone to the control of NO_x, the availability and extent of controls for NO_x, the role of biogenic VOC emissions, and the basic information required for air quality models. The study shall be completed and a proposed report made public for 30 days comment within 1 year of November 15, 1990, and a final report shall be submitted to Congress within 15 months after November 15, 1990. The Administrator shall utilize all available information and studies, as well as develop additional information, in conducting the study required by this section.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 185B, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 103, 104 Stat. 2452.)

42 U.S.C.A. § 7511f, 42 USCA § 7511f
Current through P.L. 115-30.

End of Document

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Subpart 3. Additional Provisions for Carbon Monoxide Nonattainment Areas (Refs & Annos)

42 U.S.C.A. § 7512

§ 7512. Classification and attainment dates

Currentness

(a) Classification by operation of law and attainment dates for nonattainment areas

(1) Each area designated nonattainment for carbon monoxide 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 Moderate Area or a Serious 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 carbon monoxide shall be as expeditiously as practicable but not later than the date provided in table 1:

TABLE 3 [1]

Area classification	Design value	Primary standard attainment date
Moderate	9.1-16.4 ppm	December 31, 1995
Serious	16.5 and above	December 31, 2000

(2) At the time of publication of the notice required under section 7407 of this title (designating carbon monoxide nonattainment areas), the Administrator shall publish a notice announcing the classification of each such carbon monoxide 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 with respect to such classification.

(3) 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 November 15, 1990, by the procedure required under paragraph (2), adjust the classification of the area. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for carbon monoxide in the area, the level of pollution transport between the area and the other affected areas, and the mix of sources and air pollutants in the area. The Administrator may make the same adjustment for purposes of paragraphs (2), (3), (6), and (7) of section 7512a(a) of this title.

(4) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter in this subpart referred to as the "Extension Year") the date specified in table 1 of subsection (a) of this section 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 one exceedance of the national ambient air quality standard level for carbon monoxide 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 carbon monoxide under section 7407(d)(4) of this title, and that is subsequently redesignated to nonattainment for carbon monoxide 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 subsections (a)(1) and (a)(4) 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)(2) 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.

(2) Reclassification of Moderate Areas upon failure to attain

(A) General rule

Within 6 months following the applicable attainment date for a carbon monoxide nonattainment area, the Administrator shall determine, based on the area's design value as of the attainment date, whether the area has attained the standard by that date. Any Moderate 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)(1) of this section as a Serious Area.

(B) Publication of notice

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).

(c) References to terms

Any reference in this subpart to a "Moderate Area" or a "Serious Area" shall be considered a reference to a Moderate Area or a Serious Area, respectively, as classified under this section.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 186, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 104, 104 Stat. 2452.)

Footnotes

1 So in original. Probably should be "TABLE 1".

42 U.S.C.A. § 7512, 42 USCA § 7512

Current through P.L. 115-30.

United States Code Annotated
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 3. Additional Provisions for Carbon Monoxide Nonattainment Areas (Refs & Annos)

42 U.S.C.A. § 7512a

§ 7512a. Plan submissions and requirements

Currentness

(a) Moderate Areas

Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area (or portion thereof, to the extent specified in guidance of the Administrator issued before November 15, 1990), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection, within such periods as are prescribed under this subsection, except to the extent the State has made such submissions as of November 15, 1990:

(1) Inventory

No later than 2 years from 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)(A) Vehicle miles traveled

No later than 2 years after November 15, 1990, for areas with a design value above 12.7 ppm at the time of classification, the plan revision shall contain a forecast of vehicle miles traveled in the nonattainment area concerned for each year before the year in which the plan projects the national ambient air quality standard for carbon monoxide to be attained in the area. The forecast shall be based on guidance which shall be published by the Administrator, in consultation with the Secretary of Transportation, within 6 months after November 15, 1990. The plan revision shall provide for annual updates of the forecasts to be submitted to the Administrator together with annual reports regarding the extent to which such forecasts proved to be accurate. Such annual reports shall contain estimates of actual vehicle miles traveled in each year for which a forecast was required.

(B) Special rule for Denver

Within 2 years after November 15, 1990, in the case of Denver, the State shall submit a revision that includes the transportation control measures as required in section 7511a(d)(1)(A) of this title except that such revision shall be for the purpose of reducing CO emissions rather than volatile organic compound emissions. If the State fails to include any such measure, the implementation plan shall contain an explanation of why such measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions, or reasons why such reduction is not necessary to attain the national primary ambient air quality standard for carbon monoxide.

(3) Contingency provisions

No later than 2 years after November 15, 1990, for areas with a design value above 12.7 ppm at the time of classification, the plan revision shall provide for the implementation of specific measures to be undertaken if any estimate of vehicle miles traveled in the area which is submitted in an annual report under paragraph (2) exceeds the number predicted in the most recent prior forecast or if the area fails to attain the national primary ambient air quality standard for carbon monoxide by the primary standard attainment date. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator if the prior forecast has been exceeded by an updated forecast or if the national standard is not attained by such deadline.

(4) Savings clause for vehicle inspection and maintenance provisions of the State implementation plan

Immediately after November 15, 1990, for any Moderate Area (or, within the Administrator's discretion, portion thereof), the plan for which is of the type described in section 7511a(a)(2)(B) of this title any provisions necessary to ensure that the applicable implementation plan includes the vehicle inspection and maintenance program described in section 7511a(a)(2)(B) of this title.

(5) Periodic inventory

No later than September 30, 1995, and no later than the end of each 3 year period thereafter, until the area is redesignated to attainment, a revised inventory meeting the requirements of subsection (a)(1) of this section.

(6) Enhanced vehicle inspection and maintenance

No later than 2 years after November 15, 1990, in the case of Moderate Areas with a design value greater than 12.7 ppm at the time of classification, a revision that includes provisions for an enhanced vehicle inspection and maintenance program as required in section 7511a(c)(3) of this title (concerning serious ozone nonattainment areas), except that such program shall be for the purpose of reducing carbon monoxide rather than hydrocarbon emissions.

(7) Attainment demonstration and specific annual emission reductions

In the case of Moderate Areas with a design value greater than 12.7 ppm at the time of classification, no later than 2 years after November 15, 1990, a revision to provide, and a demonstration that the plan as revised will provide, for attainment of the carbon monoxide NAAQS by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date.

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. In the case of Moderate Areas with a design value of 12.7 ppm or lower at the time of classification, 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 carbon monoxide standard by the applicable attainment date.

(b) Serious Areas

(1) In general

Each State in which all or part of a Serious Area is located shall, with respect to the Serious Area, make the submissions (other than those required under subsection (a)(1)(B) [1] of this section) applicable under subsection (a) of this section to Moderate Areas with a design value of 12.7 ppm or greater at the time of classification, and shall also submit the revision and other items described under this subsection.

(2) Vehicle miles traveled

Within 2 years after November 15, 1990, the State shall submit a revision that includes the transportation control measures as required in section 7511a(d)(1) of this title except that such revision shall be for the purpose of reducing CO emissions rather than volatile organic compound emissions. In the case of any such area (other than an area in New York State) which is a covered area (as defined in section 7586(a)(2)(B) of this title) for purposes of the Clean Fuel Fleet program under part C of subchapter II of this chapter, if the State fails to include any such measure, the implementation plan shall contain an explanation of why such measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions, or reasons why such reduction is not necessary to attain the national primary ambient air quality standard for carbon monoxide.

(3) Oxygenated gasoline

(A) Within 2 years after November 15, 1990, the State shall submit a revision to require that gasoline sold, supplied, offered for sale or supply, dispensed, transported or introduced into commerce in the larger of--

(i) the Consolidated Metropolitan Statistical Area (as defined by the United States Office of Management and Budget) (CMSA) in which the area is located, or

(ii) if the area is not located in a CMSA, the Metropolitan Statistical Area (as defined by the United States Office of Management and Budget) in which the area is located,

be blended, during the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide (as determined by the Administrator), with fuels containing such level of oxygen as is necessary, in combination with other measures, to provide for attainment of the carbon monoxide national ambient air quality standard by the applicable attainment date and maintenance of the national ambient air quality standard thereafter in the area. The revision shall provide that such requirement shall take effect no later than October 1, 1993, and shall include a program for implementation and enforcement of the requirement consistent with guidance to be issued by the Administrator.

(B) Notwithstanding subparagraph (A), the revision described in this paragraph shall not be required for an area if the State demonstrates to the satisfaction of the Administrator that the revision is not necessary to provide for attainment of the carbon monoxide national ambient air quality standard by the applicable attainment date and maintenance of the national ambient air quality standard thereafter in the area.

(c) Areas with significant stationary source emissions of CO

(1) Serious Areas

In the case of Serious Areas in which stationary sources contribute significantly to carbon monoxide levels (as determined under rules issued by the Administrator), the State shall submit a plan revision within 2 years after November 15, 1990, which provides that the term "major stationary source" includes (in addition to the sources described in section 7602 of this title) any stationary source which emits, or has the potential to emit, 50 tons per year or more of carbon monoxide.

(2) Waivers for certain areas

The Administrator may, on a case-by-case basis, waive any requirements that pertain to transportation controls, inspection and maintenance, or oxygenated fuels where the Administrator determines by rule that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in the area.

(3) Guidelines

Within 6 months after November 15, 1990, the Administrator shall issue guidelines for and rules determining whether stationary sources contribute significantly to carbon monoxide levels in an area.

(d) CO milestone

(1) Milestone demonstration

By March 31, 1996, each State in which all or part of a Serious Area is located shall submit to the Administrator a demonstration that the area has achieved a reduction in emissions of CO equivalent to the total of the specific annual emission reductions required by December 31, 1995. Such reductions shall be referred to in this subsection as the milestone.

(2) Adequacy of demonstration

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. 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) Failure to meet emission reduction milestone

If a State fails to submit a demonstration under paragraph (1) within the required period, or if the Administrator notifies the State that the State has not met the milestone, the State shall, within 9 months after such a failure or notification, submit a plan revision to implement an economic incentive and transportation control program as described in section 7511a(g)(4) of this title. Such revision shall be sufficient to achieve the specific annual reductions in carbon monoxide emissions set forth in the plan by the attainment date.

(e) Multi-State CO nonattainment areas

(1) Coordination among States

Each State in which there is located a portion of a single nonattainment area for carbon monoxide which covers more than one State ("multi-State nonattainment area") shall take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned. 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 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 nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for carbon monoxide in that portion within the period required under this part 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 for carbon monoxide nonattainment areas). If the Administrator makes such finding, in the portion of the nonattainment area within the State submitting such petition, no sanction shall be imposed under section 7509 of this title or under any other provision of this chapter, by reason of the failure to make such demonstration.

(f) Reclassified areas

Each State containing a carbon monoxide nonattainment area reclassified under section 7512(b)(2) of this title shall meet the requirements of subsection (b) 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 the attainment date) where such deadlines are shown to be infeasible.

(g) Failure of Serious Area to attain standard

If the Administrator determines under section 7512(b)(2) of this title that the national primary ambient air quality standard for carbon monoxide has not been attained in a Serious Area by the applicable attainment date, the State shall submit a plan revision for the area within 9 months after the date of such determination. The plan revision shall provide that a program of incentives and requirements as described in section 7511a(g)(4) of this title shall be applicable in the area, and such program, in combination with other elements of the revised plan, shall be adequate to reduce the total tonnage of emissions of carbon monoxide in the area by at least 5 percent per year in each year after approval of the plan revision and before attainment of the national primary ambient air quality standard for carbon monoxide.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 187, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 104, 104 Stat. 2454.)

Footnotes

1 So in original. Subsec. (a)(1) of this section does not contain a subpar. (B).

42 U.S.C.A. § 7512a, 42 USCA § 7512a
Current through P.L. 115-30.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
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Subchapter I. Programs and Activities
Part D. Plan Requirements for Nonattainment Areas
Subpart 4. Additional Provisions for Particulate Matter Nonattainment Areas

42 U.S.C.A. § 7513

§ 7513. Classifications and attainment dates

Currentness

(a) Initial classifications

Every area designated nonattainment for PM-10 pursuant to section 7407(d) of this title shall be classified at the time of such designation, by operation of law, as a moderate PM-10 nonattainment area (also referred to in this subpart as a "Moderate Area") at the time of such designation. At the time of publication of the notice under section 7407(d)(4) of this title (relating to area designations) for each PM-10 nonattainment area, the Administrator shall publish a notice announcing the classification of such area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice-and-comment and judicial review) shall apply with respect to such classification.

(b) Reclassification as Serious

(1) Reclassification before attainment date

The Administrator may reclassify as a Serious PM-10 nonattainment area (identified in this subpart also as a "Serious Area") any area that the Administrator determines cannot practicably attain the national ambient air quality standard for PM-10 by the attainment date (as prescribed in subsection (c) of this section) for Moderate Areas. The Administrator shall reclassify appropriate areas as Serious by the following dates:

(A) For areas designated nonattainment for PM-10 under section 7407(d)(4) of this title, the Administrator shall propose to reclassify appropriate areas by June 30, 1991, and take final action by December 31, 1991.

(B) For areas subsequently designated nonattainment, the Administrator shall reclassify appropriate areas within 18 months after the required date for the State's submission of a SIP for the Moderate Area.

(2) Reclassification upon failure to attain

Within 6 months following the applicable attainment date for a PM-10 nonattainment area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date--

(A) the area shall be reclassified by operation of law as a Serious Area; and

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

(c) Attainment dates

Except as provided under subsection (d) of this section, the attainment dates for PM-10 nonattainment areas shall be as follows:

(1) Moderate Areas

For a Moderate Area, the attainment date shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation as nonattainment, except that, for areas designated nonattainment for PM-10 under section 7407(d)(4) of this title, the attainment date shall not extend beyond December 31, 1994.

(2) Serious Areas

For a Serious Area, the attainment date shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment, except that, for areas designated nonattainment for PM-10 under section 7407(d)(4) of this title, the date shall not extend beyond December 31, 2001.

(d) Extension of attainment date for Moderate Areas

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date specified in paragraph [1] (c)(1) if--

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

(2) no more than one exceedance of the 24-hour national ambient air quality standard level for PM-10 has occurred in the area in the year preceding the Extension Year, and the annual mean concentration of PM-10 in the area for such year is less than or equal to the standard level.

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

(e) Extension of attainment date for Serious Areas

Upon application by any State, the Administrator may extend the attainment date for a Serious Area beyond the date specified under subsection (c) of this section, if attainment by the date established under subsection (c) of this section would be impracticable, the State has complied with all requirements and commitments pertaining to that area in the implementation plan, and the State demonstrates to the satisfaction of the Administrator that the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area. At the time of such application, the State must

submit a revision to the implementation plan that includes a demonstration of attainment by the most expeditious alternative date practicable. In determining whether to grant an extension, and the appropriate length of time for any such extension, the Administrator may consider the nature and extent of nonattainment, the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and transboundary emissions from foreign countries), the population exposed to concentrations in excess of the standard, the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and the technological and economic feasibility of various control measures. The Administrator may not approve an extension until the State submits an attainment demonstration for the area. The Administrator may grant at most one such extension for an area, of no more than 5 years.

(f) Waivers for certain areas

The Administrator may, on a case-by-case basis, waive any requirement applicable to any Serious Area under this subpart where the Administrator determines that anthropogenic sources of PM-10 do not contribute significantly to the violation of the PM-10 standard in the area. The Administrator may also waive a specific date for attainment of the standard where the Administrator determines that nonanthropogenic sources of PM-10 contribute significantly to the violation of the PM-10 standard in the area.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 188, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 105(a), 104 Stat. 2458.)

Notes of Decisions (5)

Footnotes

1 So in original. Probably should be “subsection”.

42 U.S.C.A. § 7513, 42 USCA § 7513

Current through P.L. 115-30.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
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Subpart 4. Additional Provisions for Particulate Matter Nonattainment Areas

42 U.S.C.A. § 7513a

§ 7513a. Plan provisions and schedules for plan submissions

Currentness

(a) Moderate Areas

(1) Plan provisions

Each State in which all or part of a Moderate Area is located shall submit, according to the applicable schedule under paragraph (2), an implementation plan that includes each of the following:

(A) For the purpose of meeting the requirements of section 7502(c)(5) of this title, a permit program providing that permits meeting the requirements of section 7503 of this title are required for the construction and operation of new and modified major stationary sources of PM-10.

(B) Either (i) a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date; or (ii) a demonstration that attainment by such date is impracticable.

(C) Provisions to assure that reasonably available control measures for the control of PM-10 shall be implemented no later than December 10, 1993, or 4 years after designation in the case of an area classified as moderate after November 15, 1990.

(2) Schedule for plan submissions

A State shall submit the plan required under subparagraph (1) no later than the following:

(A) Within 1 year of November 15, 1990, for areas designated nonattainment under section 7407(d)(4) of this title, except that the provision required under subparagraph (1)(A) shall be submitted no later than June 30, 1992.

(B) 18 months after the designation as nonattainment, for those areas designated nonattainment after the designations prescribed under section 7407(d)(4) of this title.

(b) Serious Areas

(1) Plan provisions

In addition to the provisions submitted to meet the requirements of paragraph [1] (a)(1) (relating to Moderate Areas), each State in which all or part of a Serious Area is located shall submit an implementation plan for such area that includes each of the following:

(A) A demonstration (including air quality modeling)--

(i) that the plan provides for attainment of the PM-10 national ambient air quality standard by the applicable attainment date, or

(ii) for any area for which the State is seeking, pursuant to section 7513(e) of this title, an extension of the attainment date beyond the date set forth in section 7513(c) of this title, that attainment by that date would be impracticable, and that the plan provides for attainment by the most expeditious alternative date practicable.

(B) Provisions to assure that the best available control measures for the control of PM-10 shall be implemented no later than 4 years after the date the area is classified (or reclassified) as a Serious Area.

(2) Schedule for plan submissions

A State shall submit the demonstration required for an area under paragraph (1)(A) no later than 4 years after reclassification of the area to Serious, except that for areas reclassified under section 7513(b)(2) of this title, the State shall submit the attainment demonstration within 18 months after reclassification to Serious. A State shall submit the provisions described under paragraph (1)(B) no later than 18 months after reclassification of the area as a Serious Area.

(3) Major sources

For any Serious Area, the terms “major source” and “major stationary source” include any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 70 tons per year of PM-10.

(c) Milestones

(1) Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(1) of this title, toward attainment by the applicable date.

(2) Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration that all measures in the plan approved under this section have been implemented and that the milestone has been met. A demonstration under this subsection shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall

require. The Administrator shall determine whether or not a State's demonstration under this subsection is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) If a State fails to submit a demonstration under paragraph (2) with respect to a milestone within the required period or if the Administrator determines that the area has not met any applicable milestone, the Administrator shall require the State, within 9 months after such failure or determination to submit a plan revision that assures that the State will achieve the next milestone (or attain the national ambient air quality standard for PM-10, if there is no next milestone) by the applicable date.

(d) Failure to attain

In the case of a Serious PM-10 nonattainment area in which the PM-10 standard is not attained by the applicable attainment date, the State in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM-10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

(e) PM-10 precursors

The control requirements applicable under plans in effect under this part for major stationary sources of PM-10 shall also apply to major stationary sources of PM-10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the standard in the area. The Administrator shall issue guidelines regarding the application of the preceding sentence.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 189, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 105(a), 104 Stat. 2460.)

Notes of Decisions (6)

Footnotes

1 So in original. Probably should be “subsection”.

42 U.S.C.A. § 7513a, 42 USCA § 7513a

Current through P.L. 115-30.

End of Document

United States Code Annotated
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Subpart 4. Additional Provisions for Particulate Matter Nonattainment Areas

42 U.S.C.A. § 7513b

§ 7513b. Issuance of RACM and BACM guidance

Currentness

The Administrator shall issue, in the same manner and according to the same procedure as guidance is issued under section 7408(c) of this title, technical guidance on reasonably available control measures and best available control measures for urban fugitive dust, and emissions from residential wood combustion (including curtailments and exemptions from such curtailments) and prescribed silvicultural and agricultural burning, no later than 18 months following November 15, 1990. The Administrator shall also examine other categories of sources contributing to nonattainment of the PM-10 standard, and determine whether additional guidance on reasonably available control measures and best available control measures is needed, and issue any such guidance no later than 3 years after November 15, 1990. In issuing guidelines and making determinations under this section, the Administrator (in consultation with the State) shall take into account emission reductions achieved, or expected to be achieved, under subchapter IV-A of this chapter and other provisions of this chapter.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 190, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 105(a), 104 Stat. 2462.)

42 U.S.C.A. § 7513b, 42 USCA § 7513b
Current through P.L. 115-30.

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Part D. Plan Requirements for Nonattainment Areas
Subpart 5. Additional Provisions for Areas Designated Nonattainment for Sulfur Oxides, Nitrogen Dioxide, or Lead

42 U.S.C.A. § 7514

§ 7514. Plan submission deadlines

Currentness

(a) Submission

Any State containing an area designated or redesignated under section 7407(d) of this title as nonattainment with respect to the national primary ambient air quality standards for sulfur oxides, nitrogen dioxide, or lead subsequent to November 15, 1990, shall submit to the Administrator, within 18 months of the designation, an applicable implementation plan meeting the requirements of this part.

(b) States lacking fully approved State implementation plans

Any State containing an area designated nonattainment with respect to national primary ambient air quality standards for sulfur oxides or nitrogen dioxide under section 7407(d)(1)(C)(i) of this title, but lacking a fully approved implementation plan complying with the requirements of this chapter (including this part) as in effect immediately before November 15, 1990, shall submit to the Administrator, within 18 months of November 15, 1990, an implementation plan meeting the requirements of subpart 1 (except as otherwise prescribed by section 7514a of this title).

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 191, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 106, 104 Stat. 2463.)

42 U.S.C.A. § 7514, 42 USCA § 7514
Current through P.L. 115-30.

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42 U.S.C.A. § 7514a

§ 7514a. Attainment dates

Currentness

(a) Plans under section 7514(a)

Implementation plans required under section 7514(a) of this title shall provide for attainment of the relevant primary standard as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation.

(b) Plans under section 7514(b)

Implementation plans required under section 7514(b) of this title shall provide for attainment of the relevant primary national ambient air quality standard within 5 years after November 15, 1990.

(c) Inadequate plans

Implementation plans for nonattainment areas for sulfur oxides or nitrogen dioxide with plans that were approved by the Administrator before November 15, 1990, but, subsequent to such approval, were found by the Administrator to be substantially inadequate, shall provide for attainment of the relevant primary standard within 5 years from the date of such finding.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 192, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 106, 104 Stat. 2463.)

42 U.S.C.A. § 7514a, 42 USCA § 7514a
Current through P.L. 115-30.

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Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter III. General Provisions

42 U.S.C.A. § 7607

§ 7607. Administrative proceedings and judicial review

Currentness

(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 [1] 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),, [2] 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 [3], 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,, [2] 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, 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[4] 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 [5] 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; 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.)

Notes of Decisions (341)

Footnotes

1 So in original. Probably should be “this”.

2 So in original.

3 So in original. Probably should be “subsection,”.

4 So in original. The word “to” probably should not appear.

5 So in original. Probably should be “sections”.

42 U.S.C.A. § 7607, 42 USCA § 7607

Current through P.L. 115-30.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter III. General Provisions

42 U.S.C.A. § 7619

§ 7619. Air quality monitoring

Effective: August 10, 2005
Currentness

(a) In general

After notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing an air quality monitoring system throughout the United States which--

(1) utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index,

(2) provides for air quality monitoring stations in major urban areas and other appropriate areas throughout the United States to provide monitoring such as will supplement (but not duplicate) air quality monitoring carried out by the States required under any applicable implementation plan,

(3) provides for daily analysis and reporting of air quality based upon such uniform air quality index, and

(4) provides for recordkeeping with respect to such monitoring data and for periodic analysis and reporting to the general public by the Administrator with respect to air quality based upon such data.

The operation of such air quality monitoring system may be carried out by the Administrator or by such other departments, agencies, or entities of the Federal Government (including the National Weather Service) as the President may deem appropriate. Any air quality monitoring system required under any applicable implementation plan under section 7410 of this title shall, as soon as practicable following promulgation of regulations under this section, utilize the standard criteria and methodology, and measure air quality according to the standard index, established under such regulations.

(b) Air quality monitoring data influenced by exceptional events

(1) Definition of exceptional event

In this section:

(A) In general

The term "exceptional event" means an event that--

(i) affects air quality;

(ii) is not reasonably controllable or preventable;

(iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and

(iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.

(B) Exclusions

In this subsection, the term "exceptional event" does not include--

(i) stagnation of air masses or meteorological inversions;

(ii) a meteorological event involving high temperatures or lack of precipitation; or

(iii) air pollution relating to source noncompliance.

(2) Regulations

(A) Proposed regulations

Not later than March 1, 2006, after consultation with Federal land managers and State air pollution control agencies, the Administrator shall publish in the Federal Register proposed regulations governing the review and handling of air quality monitoring data influenced by exceptional events.

(B) Final regulations

Not later than 1 year after the date on which the Administrator publishes proposed regulations under subparagraph (A), and after providing an opportunity for interested persons to make oral presentations of views, data, and arguments regarding the proposed regulations, the Administrator shall promulgate final regulations governing the review and handling or [1] air quality monitoring data influenced by an exceptional event that are consistent with paragraph (3).

(3) Principles and requirements

(A) Principles

In promulgating regulations under this section, the Administrator shall follow--

(i) the principle that protection of public health is the highest priority;

(ii) the principle that timely information should be provided to the public in any case in which the air quality is unhealthy;

(iii) the principle that all ambient air quality data should be included in a timely manner,[2] an appropriate Federal air quality database that is accessible to the public;

(iv) the principle that each State must take necessary measures to safeguard public health regardless of the source of the air pollution; and

(v) the principle that air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

(B) Requirements

Regulations promulgated under this section shall, at a minimum, provide that--

(i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;

(ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;

(iii) there is a public process for determining whether an event is exceptional; and

(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the national ambient air quality standards.

(4) Interim provision

Until the effective date of a regulation promulgated under paragraph (2), the following guidance issued by the Administrator shall continue to apply:

(A) Guidance on the identification and use of air quality data affected by exceptional events (July 1986).

(B) Areas affected by PM-10 natural events, May 30, 1996.

(C) Appendices I, K, and N to part 50 of title 40, Code of Federal Regulations.

CREDIT(S)

(July 14, 1955, c. 360, Title III, § 319, as added Aug. 7, 1977, Pub.L. 95-95, Title III, § 309, 91 Stat. 781; amended Aug. 10, 2005, Pub.L. 109-59, Title VI, § 6013(a), 119 Stat. 1882.)

Notes of Decisions (1)

Footnotes

1 So in original. Probably should be “of”.

2 So in original. Probably should be followed by “in”.

42 U.S.C.A. § 7619, 42 USCA § 7619

Current through P.L. 115-30.

REGULATIONS

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 50. National Primary and Secondary Ambient Air Quality Standards (Refs & Annos)

40 C.F.R. § 50.1

§ 50.1 Definitions.

Effective: October 3, 2016
Currentness

<Text of section amended by 81 FR 68276, retroactively effective Sept. 30, 2016.>

(a) As used in this part, all terms not defined herein shall have the meaning given them by the Act.

(b) Act means the Clean Air Act, as amended (42 U.S.C. 1857–18571, as amended by Pub.L. 91–604).

(c) Agency means the Environmental Protection Agency.

(d) Administrator means the Administrator of the Environmental Protection Agency.

(e) Ambient air means that portion of the atmosphere, external to buildings, to which the general public has access.

(f) Reference method means a method of sampling and analyzing the ambient air for an air pollutant that is specified as a reference method in an appendix to this part, or a method that has been designated as a reference method in accordance with part 53 of this chapter; it does not include a method for which a reference method designation has been cancelled in accordance with § 53.11 or § 53.16 of this chapter.

(g) Equivalent method means a method of sampling and analyzing the ambient air for an air pollutant that has been designated as an equivalent method in accordance with part 53 of this chapter; it does not include a method for which an equivalent method designation has been cancelled in accordance with § 53.11 or § 53.16 of this chapter.

(h) Traceable means that a local standard has been compared and certified either directly or via not more than one intermediate standard, to a primary standard such as a National Bureau of Standards Standard Reference Material (NBS SRM), or a USEPA/NBS-approved Certified Reference Material (CRM).

(i) Indian country is as defined in 18 U.S.C. 1151.

(j) Exceptional event means an event(s) and its resulting emissions that affect air quality in such a way that there exists a clear causal relationship between the specific event(s) and the monitored exceedance(s) or violation(s), is not reasonably

controllable or preventable, is an event(s) caused by human activity that is unlikely to recur at a particular location or a natural event(s), and is determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event. It does not include air pollution relating to source noncompliance. Stagnation of air masses and meteorological inversions do not directly cause pollutant emissions and are not exceptional events. Meteorological events involving high temperatures or lack of precipitation (i.e., severe, extreme or exceptional drought) also do not directly cause pollutant emissions and are not considered exceptional events. However, conditions involving high temperatures or lack of precipitation may promote occurrences of particular types of exceptional events, such as wildfires or high wind events, which do directly cause emissions.

(k) Natural event means an event and its resulting emissions, which may recur at the same location, in which human activity plays little or no direct causal role. For purposes of the definition of a natural event, anthropogenic sources that are reasonably controlled shall be considered to not play a direct role in causing emissions.

(l) Exceedance with respect to a national ambient air quality standard means one occurrence of a measured or modeled concentration that exceeds the specified concentration level of such standard for the averaging period specified by the standard.

(m) Prescribed fire is any fire intentionally ignited by management actions in accordance with applicable laws, policies, and regulations to meet specific land or resource management objectives.

(n) Wildfire is any fire started by an unplanned ignition caused by lightning; volcanoes; other acts of nature; unauthorized activity; or accidental, human-caused actions, or a prescribed fire that has developed into a wildfire. A wildfire that predominantly occurs on wildland is a natural event.

(o) Wildland means an area in which human activity and development are essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.

(p) High wind dust event is an event that includes the high-speed wind and the dust that the wind entrains and transports to a monitoring site.

(q) High wind threshold is the minimum wind speed capable of causing particulate matter emissions from natural undisturbed lands in the area affected by a high wind dust event.

(r) Federal land manager means, consistent with the definition in 40 CFR 51.301, the Secretary of the department with authority over the Federal Class I area (or the Secretary's designee) or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission.

Credits

[36 FR 22384, Nov. 25, 1971, as amended at 41 FR 11253, March 17, 1976; 48 FR 2529, Jan. 20, 1983; 63 FR 7274, Feb. 12, 1998; 72 FR 13580, March 22, 2007; 81 FR 68276, Oct. 3, 2016]

SOURCE: 36 FR 22384, Nov. 25, 1971; 50 FR 25544, June 19, 1985; 63 FR 7274, Feb. 12, 1998 unless otherwise noted., unless otherwise noted.

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

Notes of Decisions (11)

Current through May 11, 2017; 82 FR 21951.

End of Document