**ORAL ARGUMENT NOT YET SCHEDULED**

Case No. 18-1285 (and consolidated cases)

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

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**STATE OF MARYLAND, *et al.*,**

*Petitioners*,

**v.**

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

*Respondents.*

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On Petition for Review of Final Action by the
United States Environmental Protection Agency
83 Fed. Reg. 50,444 (Oct. 5, 2018)

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# OPENING PROOF BRIEF FOR PETITIONER STATE OF MARYLAND

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March 29, 2019

## CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), the undersigned counsel of record certifies as follows:

### A. Parties

Petitioners

The following parties appear as petitioners in these consolidated cases: State of Maryland, State of Delaware, Chesapeake Bay Foundation, Inc., Adirondack Council, Chesapeake Climate Action Network, Clean Air Council, Environmental Defense Fund, Environmental Integrity Project, Physicians for Social Responsibility, Chesapeake, Inc., and Sierra Club (Petitioners).

Respondents

The following parties appear as respondents: United States Environmental Protection Agency and Andrew Wheeler, in his official capacity as Administrator of the United States Environmental Protection Agency (together, EPA).

Intervenors

The following parties have been permitted to intervene in support of Petitioners: State of New Jersey, State of New York, and City of New York.

The following parties have been permitted to intervene in support of Respondents: the Utility Air Regulatory Group (UARG), Duke Energy Indiana, LLC, and Duke Energy Kentucky, Inc.

### B. Ruling Under Review

Petitioners seek review of the final agency action by EPA entitled "Response to Clean Air Act Section 126(b) Petitions from Delaware and Maryland," 83 Fed. Reg. 50,444 (Oct. 5, 2018).

### C. Related Cases

The final agency action at issue in this proceeding has not been previously reviewed by this or any other court. There are no related cases (other than those consolidated herein) within the meaning of D.C. Circuit Rule 28(a)(1)(C).

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## GLOSSARY

| | |
|---|---|
| FIP | Federal implementation plan |
| mmBtu | One million British Thermal Units |
| NAAQS | National ambient air quality standards |
| $NO_x$ | Oxides of nitrogen |
| ppb | Parts per billion |
| RACT | Reasonably available control technology |
| SCR | Selective catalytic reduction |
| SIP | State implementation plan |
| SNCR | Selective non-catalytic reduction |

## PRELIMINARY STATEMENT

This case involves efforts to address the persistent problem of interstate transport of air pollution. Pollutants generated by sources in upwind states are carried by prevailing winds into downwind states and hamper their ability to comply with federal air quality standards. Although a state can regulate sources of air pollution within its own borders, its laws cannot reach sources in other states. Without federal intervention, transported pollution requires downwind states to regulate their own sources more stringently to meet federal air quality standards, while upwind states and sources reap the benefits of economic activity without bearing its costs.

To address this inequity, the Clean Air Act (the "Act") includes various mechanisms for abating interstate pollution transport. Over the last decade, Maryland has repeatedly sought regulation of upwind sources through those means, first through the creation of a regional nonattainment area under § 107, then through the expansion of the Ozone Transport Region under § 176A. Each time, EPA denied the request, suggesting that regulation through different provisions, including § 126, would be more appropriate. EPA eventually adopted the Cross State Air Pollution Rule ("CSAPR") Update under § 110, but acknowledged that the regional measures that it required were only a partial solution to interstate air transport and that additional relief would be available under § 126.

Following EPA's suggestion, Maryland filed a petition under § 126 asking EPA to require specific upwind sources to reduce their emissions by operating their already-installed pollution controls, so that Maryland could attain and maintain the 2008 and 2015 Ozone NAAQS (the "Petition"). Once again, EPA denied Maryland's request, this time claiming that the *partial* solution to *regional* pollution transport adopted in the CSAPR Update somehow was a *complete* solution to Maryland's *source-specific* claims. Maryland asks this Court to end this regulatory shell game, vacate EPA's denial, and remand for the agency to impose appropriate emissions limitations on the identified sources.

## JURISDICTIONAL STATEMENT

This Court has exclusive jurisdiction to review the Administrator's final action denying a petition under § 126(b) of the Act, 42 U.S.C. § 7426(b), where such action is based on a "nationally applicable" determination or a determination of "nationwide scope and effect." 42 U.S.C. § 7607(b). Maryland challenges EPA's final action denying Maryland's petition under § 126. *See* "Response to Clean Air Act Section 126(b) Petitions from Delaware and Maryland," 83 Fed. Reg. 50,444 (Oct. 5, 2018). EPA's denial was promulgated as "nationally applicable" or of "nationwide scope and effect." *Id*. at 50,472. Maryland petitioned for review in this Court on October 17, 2018, within the sixty-day period provided in 42 U.S.C. § 7607(b).

## ISSUES PRESENTED

1. Whether EPA acted arbitrarily and capriciously in denying the Petition based on an earlier measure for controlling air pollution transport on a *regional* basis under § 110 of the Act, when § 126 is directed at *source-specific* emissions and when the Petition demonstrated that emissions from 36 upwind specific sources were contributing to air pollution problems in Maryland.

2. Whether EPA's failure to consider the Petition under the 2015 Ozone NAAQS was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

## STATUTES AND REGULATIONS

The relevant statutory and regulatory provisions appear in the Addendum filed with this brief.

## STATEMENT OF THE CASE

### I. Statutory Background

#### A. National Ambient Air Quality Standards for Ozone

The Act requires EPA to establish and periodically revise the NAAQS for criteria pollutants at levels that will protect public health. 42 U.S.C. §§ 7408, 7409. One such pollutant is ground level ozone, which forms when nitrogen oxides ("$NO_x$") and volatile organic compounds react in the presence of sunlight. *See* 81 Fed. Reg. 74,504, 74,513 (Oct. 26, 2016). EPA has found that elevated levels of

ozone contribute to premature mortality and to health problems such as asthma, bronchitis, heart disease, and emphysema. 80 Fed. Reg. 65,292, 65,302-11 (Oct. 26, 2015). Children, the elderly, and those with existing lung diseases, are especially vulnerable. *Id.*

In 2008, EPA revised the primary and secondary NAAQS for ozone to 75 parts per billion ("ppb"). 73 Fed. Reg. 16,436 (Mar. 27, 2008) ("2008 Ozone NAAQS"). In 2015, based on updated scientific information about the health risks of ozone, EPA lowered the primary and secondary ozone NAAQS to 70 ppb ("2015 Ozone NAAQS"). 80 Fed. Reg. 65,292. Both of these standards remain in effect, albeit with different deadlines for compliance.

Once EPA establishes a NAAQS, it must designate areas within each state according to their respective levels of compliance. Areas where pollutant levels exceed the corresponding NAAQS are designated as "nonattainment" areas, and those that meet the standard are designated as "attainment" areas. 42 U.S.C. § 7407(d). Ozone nonattainment areas are further classified as either marginal, moderate, serious, severe, or extreme. 80 Fed. Reg. 12,264, 12,268 (Mar. 6, 2015). Each state must meet the ozone NAAQS "as expeditiously as practicable," but in any event within specified deadlines associated with each area's classification. 42 U.S.C. § 7511(a)(1), (b)(1).

Under the Act, states bear the primary burden of ensuring that areas within their borders attain and maintain the NAAQS by regulating sources within their boundaries. Each state must submit a state implementation plan, or "SIP," to EPA within three years of any new or revised NAAQS. 42 U.S.C. § 7410(a)(1). If EPA determines that a state has failed to submit an adequate SIP, EPA must promulgate a federal implementation plan, or "FIP," correcting the deficiency within two years, unless the State corrects the deficiency. 42 U.S.C. §§ 7410(c)(1), 7410(k).

### B. Interstate Transport of Ozone Pollution

Because the prevailing winds blow from west to east, states in the eastern United States receive pollutants from sources in upwind states, typically hundreds of miles away. 81 Fed. Reg. at 74,514. Without federal statutory restrictions, an upwind state has little incentive to eliminate or reduce out-of-state impacts when planning for its own attainment or maintenance of air quality standards.

Congress addressed this inequity through three provisions designed to ensure that upwind states take sufficient steps to reduce the pollution they send to downwind states: (1) the § 110 Good Neighbor Provision; (2) the § 126 state petition mechanism; and (3) the Ozone Transport Region provisions in § 176A and § 184.

#### 1. Section 110 (The Good Neighbor Provision)

The Act's "Good Neighbor Provision" requires that each state's implementation plan adequately prohibit in-state sources from emitting pollutants

that contribute significantly to another state's nonattainment or interfere with another state's maintenance of a NAAQS. 42 U.S.C. § 7410(a)(2)(D)(i)(I). If a state's SIP fails to satisfy the Good Neighbor Provision, or if the state fails to submit a SIP at all, EPA must issue a FIP remedying the defect. 42 U.S.C. § 7410(c)(1).

**2. The § 126 State Petition Mechanism**

Congress also provided downwind states with a separate means to seek direct regulation of specific upwind sources. Under § 126(b), "[a]ny State or political subdivision may petition [EPA] for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of [the Good Neighbor Provision]."[1] 42 U.S.C. § 7426(b). EPA must make the finding or deny the petition within sixty days. 42 U.S.C. § 7426(b). If EPA makes the requested finding, the identified source must shut down within three months unless EPA allows the source's continued operation under EPA-prescribed emission limitations and compliance schedules designed to bring about compliance as expeditiously as practicable, but no later than three years after the finding. 42 U.S.C. § 7426(c).

[1] This Court has held that the statute's cross-reference to § 7410(a)(2)(D)(ii) is a scrivener's error, and that the correct cross-reference is to § 7410(a)(2)(D)(i), the Good Neighbor Provision. *See Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1040-44 (D.C. Cir. 2001).

### 3. The Ozone Transport Region, §§ 184 and 176A

In 1990, Congress added § 184 to the Act to create an ozone transport region made up of eleven states (including Maryland) and the District of Columbia/Northern Virginia Consolidated Metropolitan Statistical Area. 42 U.S.C. §§ 7511c(a)-(b). States within the ozone transport region must implement various measures to control ozone precursor emissions. *See* 42 U.S.C. §§ 7511a, 7511c(b). Section 176A authorizes EPA—either on its own initiative or in response to a governor's petition—to "add any State or portion of a State" to the ozone transport region when it "has reason to believe that the interstate transport of air pollutants from such State significantly contributes to a violation of the [ozone NAAQS] in the transport region." 42 U.S.C. § 7506a(a)(1).

## II. Maryland's Efforts to Address Transported Air Pollution

### A. Maryland's Use of State Law to Reach Attainment

Maryland has taken a number of steps to attain and maintain the 2008 and 2015 Ozone NAAQS by imposing stringent emission controls on in-state sources. For example, in 2006, Maryland required power plants to comply with specified emissions caps which reduced $NO_x$ emissions by approximately 80% from 2005 through 2016. Md. Code Ann., Envir. §§ 2-1001–2-1002; 2006 Md. Laws, ch. 23; *see also* Maryland Code of Regulations (COMAR) 26.11.27. Despite this large reduction, it became clear that these sources were not running their controls

effectively every day. Therefore, Maryland required them to optimize their controls throughout the ozone season, consistent with the controls' specifications and good engineering and maintenance practices. COMAR 26.11.38.03 and 26.11.38.05. Still, Maryland continues to experience pollution transport at levels that make it difficult to attain and maintain the NAAQS. And ozone pollution from upwind states accounts for much of that difficulty, regularly making up 70% or more of Maryland's ozone readings. Pet. at 11 [JA___]; Pet. App. C at 2, 4 [JA____].

### B. Maryland's Efforts to Invoke the Clean Air Act's Provisions for Addressing Interstate Transport of Ozone Pollution

Unable to resolve its persistent interstate pollution transport problem through state-law means, Maryland has repeatedly sought EPA's assistance by invoking the remedies available to it under federal law.

#### 1. EPA's Denial of a "Large Nonattainment Area"

Following promulgation of the 2008 Ozone NAAQS, each governor recommended to EPA those areas of their respective states that should be designated as nonattainment, attainment, or unclassifiable, including "nearby areas" that contribute to air quality in an area that does not meet the NAAQS. 42 U.S.C. § 7407(d)(1)(A)(i). As part of that process, Maryland, Delaware, Connecticut, and the District of Columbia recommended that EPA create a regional nonattainment area composed of the many states with sources that, through pollution transport, contribute to nonattainment within the four jurisdictions. Despite recognizing that a

"large part" of the ozone problem in Maryland comes from upwind states, EPA denied the request because, in its opinion, use of the Act's other pollution transport provisions, such as the Good Neighbor Provision or the Ozone Transport Region, would be more appropriate.[2]

**2. EPA's Denial of the Eastern States' § 176A Petition**

Taking up EPA's suggestion, Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont submitted a petition under § 176A of the Act asking EPA to expand the Ozone Transport Region to include states with sources that contribute to nonattainment in the petitioning states. EPA failed to act on that petition for nearly two years. After litigation finally forced it to act, EPA denied the petition.[3] *See* 82 Fed. Reg. 51,238 (Nov. 3, 2017); *see also New York v. McCarthy*, Case No. 16-cv-827 (S.D.N.Y.). In its denial, EPA maintained that the Act's Good Neighbor Provision and the § 126 petition process offered ozone transport remedies that were more suitable than expanding the Ozone Transport Region. 82 Fed. Reg. at 51,242.

[2] Responses to Significant Comments on the State and Tribal Designation Recommendations for the 2008 Ozone National Ambient Air Quality Standards (NAAQS), Docket Number EPA-HQ-OAR-2008-0476, at 9, 12 (April 30, 2012).

[3] That denial is currently subject to review before this Court in *State of New York v. EPA*, Case No. 17-1273 (D.C. Cir.).

### 3. The Cross State Air Pollution Rule (CSAPR) Update

Meanwhile, since the late 1990s, EPA had been engaging in four regional rulemakings concerning interstate transport of ozone precursors. Most recently, EPA finalized the Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, which addressed air pollution from coal-fired electric generating units at power plants ("CSAPR Update"). 81 Fed. Reg. 74,504. The CSAPR Update established FIPs for 22 states, to address the 2008 Ozone NAAQS prior to the 2018 attainment deadline for moderate nonattainment areas. *Id*. at 74,504, 74,506, 74,520-23. Although the CSAPR Update implemented important pollution-control measures, EPA emphasized that, for most states, the rule represented only a first, partial step towards addressing Good Neighbor obligations, and therefore, additional reductions should be considered. *Id*. at 74,521.

The CSAPR Update used a four-step methodology to establish FIPs for the states at issue. In step one, EPA identified downwind air monitors, or "receptors," expected to have difficulty attaining or maintaining the 2008 Ozone NAAQS. *Id*. at 74,516, 74,526.

In step two, EPA determined which upwind states affected a downwind nonattainment or maintenance receptor enough to "contribute" to its air quality problems. *Id*. at 74,537. EPA considers those states to be "linked" to the particular receptor. *Id*. at 74,518.

In step three, EPA evaluated what level of emissions from each covered source constituted a "significant" contribution to downwind nonattainment or "interfered" with downwind maintenance. *Id*. at 74,539-40. To do so, EPA evaluated several possible levels of control, each associated with a particular marginal cost, and calculated the change in each state's emissions that would result. *Id*. at 74,539-40, 74,543, 74,547-49. EPA determined that implementing controls at or below a marginal cost of $1,400 per ton of $NO_x$ emissions reduction—the cost associated with turning on and optimally running already-installed selective catalytic reduction ("SCR") technology—would maximize cost-effectiveness. *Id*. at 74,508. EPA thus concluded that the states that had failed to achieve emissions reductions commensurate with turning on and optimizing installed SCR technology at power plants were contributing "significantly" to downwind nonattainment, or "interfering" with downwind maintenance. *Id*. at 74,553-54.

Finally, in step four, EPA adopted a cap-and-trade program to eliminate the offending contributions found in step three. Under that program, each "linked" state has an emissions budget for the year. As part of its budget-setting process, EPA assumed that turning on and optimizing SCR controls could achieve a $NO_x$ emissions rate of 0.10 lbs/mmBtu, which it considered a "generally achievable" rate for all SCR-controlled sources on a national "fleet-wide" basis. *Id*. at 74,543-44; EGU $NO_x$ Mitigation Strategies TSD at 5-6 [JA___]. Sources in each linked state receive

allowances from that state's budget, and must surrender one allowance for every ton of $NO_x$ they emit during the annual ozone season. 81 Fed. Reg. at 74,568. Individual sources can, however, emit more $NO_x$ by acquiring additional allowances. *Id*. at 74,554, 74,562. They also can "bank" allowances for future years and can even carry over some allowances from the original CSAPR, which was promulgated in July 2011 for the 1997 Ozone NAAQS. *Id.* at 74,554, 74,557.

In announcing the final rule, EPA repeatedly stressed that the CSAPR Update was only a "partial" remedy for the problem of interstate ozone transport. *Id*. at 74,506, 74,520, 74,521-23. Consistent with that caveat, EPA determined that downwind air quality problems under the 2008 Ozone NAAQS would persist following implementation of the CSAPR Update, including in Maryland.[4] *Id*. at 74,552.

### C. Maryland's § 126 Petition.

On November 16, 2016, Maryland filed a petition under § 126 ("the Petition"), asking EPA to find that thirty-six identified sources in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are emitting $NO_x$ in amounts that violate the Good

[4] EPA has since issued a rule declaring that—contrary to its earlier pronouncements—the CSAPR Update is a *complete* remedy and that no additional emissions reductions from any covered state are necessary. 83 Fed. Reg. 65,878 (Dec. 21, 2018). That rule is currently under review in *State of New York, et al. v. EPA*, Case No. 19-1019 (D.C. Cir.).

Neighbor Provision by significantly contributing to nonattainment or maintenance problems in Maryland. The Petition demonstrated that all thirty-six sources could achieve emissions levels that would comply with the Good Neighbor Provision simply by optimizing and consistently running already-installed pollution-control technology. For thirty-two of those sources, that meant optimizing and operating SCR technology on each day of the ozone season; four other sources would have to optimize and consistently operate their selective non-catalytic reduction ("SNCR") technology. Pet. at 4-6 [JA__-___].

To support the Petition, Maryland compared each upwind source's historic and current $NO_x$ emissions rates. Pet. App. A [JA___]; MDE Comments at 13 [JA___]. Using EPA's own data, Maryland identified the year with the lowest average ozone-season emissions rate at each source (excluding the year the associated pollution control technology was installed, when SCR controls are most efficient). *Id*. Maryland then calculated each source's *highest* 30-day rolling average rate of $NO_x$ emissions during that year. Pet. App. A at 2 [JA ___]; MDE Comments at 13-14, Table 2 [JA____]. These highest rolling average rates of emissions represent a level of pollution control that the corresponding source should be able to consistently achieve using its installed and optimized technology under real world conditions. Pet. App. A at 6-12 [JA__-__]; MDE Comments at 15-16 [JA__-__]. The Petition also demonstrated that, as of 2015, each upwind source was

emitting $NO_x$ at rates more than double the historical, optimized rate. MDE Comments at 14 [JA___]. Based on these source-specific comparisons, Maryland asked EPA to require the 30-day rolling average rates as federally enforceable emissions limits under § 126(c).

**D. EPA's Denial of Maryland's 126 Petition.**

The Act required EPA to respond to the Petition within sixty days. 42 U.S.C. § 7426(b). EPA did not act for nearly two years, until compelled to do so by court order. *Maryland v. Pruitt et al.*, Case No. 17-cv-02873 (D. Md.), Doc. 35, Order Granting Mot. Summ. J. (June 13, 2018). On October 5, 2018, EPA published its denial of Maryland's Petition.[5]

In its denial, EPA used the same four-step analysis that it used in the CSAPR Update, described above. EPA identified a maintenance problem in Maryland in step one and concluded that the identified upwind states were linked to that maintenance problem in step two. 83 Fed. Reg. at 50,464. Step three, according to EPA, required it to consider "whether there are further $NO_x$ reductions beyond what was already finalized in the CSAPR Update available at the specific sources

[5] This brief addresses only EPA's denial of Maryland's petition. EPA's decision also includes the denial of four separate § 126 petitions filed by the State of Delaware.

identified in the petitions, the cost of any such reductions, and the potential air quality improvements that would result from any such reductions." *Id*.

EPA acknowledged that the identified sources had previously failed to operate, or had poorly operated, their $NO_x$ control equipment. *Id*. at 50,464. Nonetheless, it concluded that the identified sources "do not currently emit" and "are not expected to emit" pollution in violation of the Good Neighbor Provision. In EPA's view, the CSAPR Update had already accounted for emissions reductions from the identified sources—either by using optimized operation of installed SCR controls as a basis for its emission budgets, or by deeming operation of installed SNCR controls too expensive to use as a basis for those budgets. *Id*. at 50,464-65. EPA also stated that actual emissions reductions at the identified sources, or commensurate reductions at other sources in the same state, had in fact resulted from the CSAPR Update. *Id*. at 50,465. Thus, EPA concluded that the CSAPR Update had "generally" led to the $NO_x$ reductions that the Petition sought. *Id*.

Over Maryland's objections, EPA considered the Petition only under the 2008 Ozone NAAQS, and not under the 2015 Ozone NAAQS. EPA did so because, in its view, the Petition had failed to adequately request consideration under the 2015 Ozone NAAQS. *Id*. at 50,463.

## STANDARD OF REVIEW

This Court must set aside agency action under § 126 of the Act if it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "in excess of statutory jurisdiction, authority, or limitations." 42 U.S.C. § 7607(d)(9). In determining whether EPA's action is "arbitrary and capricious," the Court applies the standard of review applicable under the Administrative Procedure Act. *See Allied Local and Regional Mfrs. Caucus v. EPA*, 215 F.3d 61, 68 (D.C. Cir. 2000).

For its decision to be sustained, "the agency must consider all of the relevant factors and demonstrate a reasonable connection between the facts on the record and the resulting policy choice." *Sierra Club v. Costle*, 657 F.2d 298, 324 (D.C. Cir. 1981). The agency must provide a reasonable explanation for its denial, and must adequately explain the facts and policy concerns it relied on. *Flyers Rights Educ. Fund v. FAA*, 864 F.3d 738, 743 (D.C. Cir. 2017). "Where, as here, Congress has delegated to an administrative agency the critical task of assessing public health and the power to make decisions of national import in which individuals' lives and welfare hang in the balance, that agency has the heaviest of obligations to explain and expose every step of its reasoning." *American Lung Ass'n v. EPA*, 134 F.3d 388, 392 (D.C. Cir. 1998).

## SUMMARY OF ARGUMENT

EPA acted arbitrarily in determining that the CSAPR Update, a prior rule issued under § 110 of the Act, had adequately addressed the issues raised in the Petition. The CSAPR Update was promulgated only as a partial remedy, as EPA acknowledged at the time, because the upwind states where the identified sources are located remain linked to Maryland's persistent problems maintaining the 2008 Ozone NAAQS.

The Petition, for its part, used actual emissions data to demonstrate that the sources it identified could achieve additional emissions reductions, beyond those required by the CSAPR Update, by optimizing and consistently operating already-installed controls. In rejecting that demonstration, EPA arbitrarily and unlawfully stripped § 126 of its role as an independent mechanism for addressing interstate pollution transport, separate and apart from § 110; ignored the partial nature of the CSAPR Update; focused on regional, fleet-wide emissions assumptions instead of source-specific data; relied on a *seasonal* cap-and-trade program for compliance with a *daily* ozone standard; and misapplied the CSAPR Update's treatment of SNCR controls.

EPA's reliance on emissions data from 2017—the first year following implementation of the CSAPR Update—cannot reasonably support the Petition's denial. The 2017 data actually confirm that many of the upwind sources identified

in the Petition continue to emit $NO_x$ at rates well above the CSAPR Update's fleet-wide rate, while data from other, SNCR-equipped sources demonstrate that SNCR is a cost-effective means of reducing emissions under current operating constraints.

Finally, EPA's refusal to consider the Petition under the more stringent 2015 ozone standards was arbitrary and capricious. Those standards were in place during EPA's review of Maryland's Petition and they confirm the need to grant the Petition.

## STANDING

EPA's denial of the Petition injures Maryland. "States are not normal litigants" and are entitled to "special solicitude" for purposes of standing, particularly where Congress has expressly given them the right to challenge a federal agency's action. *Massachusetts v. EPA*, 549 U.S. 497, 517-18 (2007). The Act allows a state to file a § 126 petition and allows this Court to review a petition's denial when it is deemed to have nationwide scope or effect, as EPA concluded here. *See* 42 U.S.C. §§ 7426(b), 7607(b).

EPA's denial of the Petition injures Maryland by hampering its ability to attain and maintain the NAAQS. Without relief from interstate pollution transport, Maryland will continue to bear increased regulatory burdens and will be forced to offset incoming pollution with in-state reductions to attain and maintain the NAAQS. *See* Pet. at 6-7, 15-17 [JA__-__, __-__]; *West Virginia v. EPA*, 362 F.3d

861, 868 (D.C. Cir. 2004) (EPA action that makes it more onerous for state to address pollution causes cognizable injury sufficient to confer Article III standing);.

Maryland is injured in its *parens patriae* capacity, moreover, because its residents suffer the health effects of elevated ozone levels. *See, e.g.*, 81 Fed. Reg. at 74,574; 72 Fed. Reg. 37,818, 37,824-62 (July 11, 2007); Pet. at 13, 16 [JA__, ___]. Those levels persist in significant part because of EPA's failure to fully control interstate pollution transport, including through the § 126 process. *E.g.*, MDE Comments at 22-23 [JA___]; Pet. App. A at 69 [JA___].

Maryland also has an interest in preventing harm to its ecosystems, including the Chesapeake Bay. *Massachusetts*, 549 U.S., at 519-22. Elevated ozone levels caused by pollution transport and atmospheric deposition of nitrogen harm these natural resources. *See* 81 Fed. Reg. at 74,514 (finding ozone exposure causes visible foliar injury, decreases plant growth, and affects ecosystem community composition.).

Finally, Maryland suffers injury in the form of additional expenditures by state-administered health care programs resulting from its residents' exposure to elevated ozone levels *See e.g.*, *id*. at 74,574 (associating elevated ozone levels with additional hospital admissions and emergency room visits).

# ARGUMENT

## I. EPA's Reliance on the CSAPR Update to Deny the Petition Was Arbitrary and Capricious.

In denying the Petition, EPA agreed that Maryland has, and will continue to have, problems maintaining the 2008 Ozone NAAQS. 83 Fed. Reg. at 50,464. EPA also agreed that the states that are home to the identified upwind sources are linked to Maryland's maintenance problem. *Id*. EPA nonetheless denied the Petition because, in its view, the CSAPR Update already had adequately addressed the issues that Maryland raised. Specifically, EPA maintained that (1) implementation of the CSAPR Update's statewide emissions budgets had resulted in $NO_x$ emissions reductions at the identified sources (or their surrounding airsheds); and (2) the identified sources' failure to optimize and consistently operate and consistently operate their installed pollution controls could not constitute a violation of the Good Neighbor Provision because the CSAPR Update had (a) already accounted for SCR optimization; and (b) already determined that the operation and optimization of installed SNCR controls was not cost-effective. EPA's conclusion was arbitrary and capricious.

### A. The CSAPR Update Did Not Fully Satisfy the Good Neighbor Provision.

The CSAPR Update did not purport to fully resolve the problem of interstate ozone transport. Rather, it was—by EPA's own description—a partial remedy that

would require additional controls to completely address the interstate transport problems that were projected to persist. 81 Fed. Reg. at 74,506, 74,520, 74,521-23. As EPA explained: "[T]he EPA is only quantifying a subset of each state's emission reduction obligation pursuant to the good neighbor provision. . . . It is only due to the partial nature of the remedy provided by this rule that the EPA is finalizing a single uniform level of control stringency for all CSAPR Update states." *Id*. at 74,520.

Because the CSAPR Update was only a "partial" remedy, it did not resolve Maryland's pollution transport problem. By EPA's own admission, the State continues to have problems maintaining the 2008 Ozone NAAQS due to interstate air pollution transport. 83 Fed. Reg. at 50,458; *see also* 81 Fed. Reg. at 74,551-52 (recognizing that implementation of the CSAPR Update would not cause any upwind state's contribution to Maryland's ozone problems to fall below 1%, the threshold used to determine whether an upwind source "contributes' to a downwind problem). EPA's steadfast reliance on the CSAPR Update as the final word effectively ignores its status as a "partial" remedy for a problem that remains unsolved.

### B. The Petition Demonstrated That Further Cost-Effective $NO_x$ Reductions Are Available at SCR-Equipped Sources.

In denying the Petition, EPA conceded that Maryland had satisfied steps one and two of its four-step framework—that a downwind air pollution problem persists,

and that the problem is linked to the states where the identified sources are located. Then, at step three, EPA turned to whether the Petition had demonstrated that there were further cost-effective $NO_x$ reductions available at the specific identified sources, beyond those finalized in the CSAPR Update. 83 Fed. Reg. at 50,464.

EPA should have determined that such reductions were indeed available at SCR-equipped sources. First, the CSAPR Update already established that turning on and optimizing SCR technology is cost-effective, taking into account a variety of fixed and variable costs. 81 Fed. Reg. at 74,540-41; 80 Fed. Reg. at 75,731-32. Thus, there should have been no dispute that optimizing and continuously operating already-installed SCR controls is a cost-effective emissions reduction strategy.

With EPA having already made this determination, the Petition demonstrated that the identified sources were *not* optimizing and continuously operating those controls. Using EPA's own data, the Petition identified the lowest average ozone-season $NO_x$ rate at each of thirty-two SCR-equipped sources between 2005 and 2014—a period well after each source had installed its SCR. Pet. App. A, at 3-5 [JA____]. Those data showed that each source was capable of achieving an average ozone-season emissions rate that was less than half the rate the source was achieving in 2015, and 5 to 60 percent lower than the 0.10 lb/mmBtu figure that the CSAPR Update had calculated as a fleet-wide national average. *Id.* at 5 [JA___]; MDE Comments at 29-30, Table 8 [JA____].

For each identified source, the Petition calculated the *highest* 30-day rolling average rate of emissions experienced by that source during its best ozone season.[6] Pet. App. A, at 6-10 [JA____]. For nearly every source, even this highest 30-day rate—which the source achieved on *each* of the 123 compliance eligible days of the corresponding ozone-season[7]—was below the 0.10 lb/mmBtu rate that the CSAPR Update had used as a seasonal average. *Id*.; MDE Comments at 18-19, 29-30 [JA__-___, ___-___]. And for all sources, this 30-day rate was below the rate the source was achieving during the 2015 and 2016 ozone seasons. The Petition asked that these 30-day rates be made federally enforceable, to ensure that the sources optimize and consistently run their installed SCRs controls and reduce emissions accordingly. Because the Petition had demonstrated that these rates were consistently achievable in a cost-effective manner and under real-world conditions, the Petition should have been granted. EPA's reasons for denying it do not pass muster, as explained below.

### C. EPA Cannot Rely on the CSAPR Update to Foreclose Additional Regulation of Specific SCR-Equipped Sources.

In denying Maryland's Petition, EPA reasoned that (1) the CSAPR Update calculated state-by-state emissions budgets in a manner that presumed operation and

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[6] Unlike a cap on the amount of $NO_x$ allowed regardless of energy produced, a rate-based limit is not affected by annual fluctuations in the number of days a source may operate.

[7] While there are 153 days in an ozone season, only 123 days are applicable for compliance purposes when implementing a 30-day rolling average.

optimization of SCR controls; (2) operation of those controls had thus already been incorporated into each state's emission budget; and therefore (3) a source's failure to operate or optimize such controls cannot merit § 126 relief so long as the source is in compliance with the CSAPR Update's cap-and-trade requirements. 83 Fed. Reg. at 50,445 [JA___]. In other words, EPA determined that the CSAPR Update effectively resolved the Petition's requests relating to SCR controls—regardless of whether the identified sources are even operating such controls, or the extent to which better operation could further reduce $NO_x$ emissions.

That position is arbitrary and capricious. As an initial matter, it unlawfully conflates § 126(b) and § 110. This Court has stressed that Congress intended § 126(b) as an *independent* statutory tool for abating interstate pollution transport, separate from the implementation plans developed under the Good Neighbor Provision. *See Appalachian Power Co.*, 249 F.3d at 1047-48 (finding state air pollution control decisions under § 110 are not absolute in the face of an independently operating § 126); *see also* H.R. Rep. No. 95-294, at 331 (1977), reprinted in Legislative History of the Clean Air Act Amendments of 1977, at 2798 (stating that the § 126 mechanism is an "entirely alternative method and basis for preventing and abating interstate air pollution"). By simply pointing to the CSAPR

Update—i.e., a series of federal implementation plans promulgated under § 110—as satisfying the Petition, EPA reads § 126 out of the Act.

In other respects, EPA justified its denial with apples-to-oranges comparisons that do not address the basis of Maryland's Petition. First, EPA relies heavily on the fact that the CSAPR Update was directed at regionally reducing emissions throughout the upwind states, but whether all of the sources in the region collectively achieve the reductions prescribed by the CSAPR Update says nothing about the feasibility of reducing emissions from the *specific sources* identified in Maryland's Petition. Because additional emissions reductions may be available on a source-by-source basis through better operations, the emissions reductions quantified in the rule do not necessarily satisfy each source's Good Neighbor obligation. *See* 81 Fed. Reg. at 74,522-23. *See GenOn REMA, LLC v. EPA*, 722 F.3d 513, 523-24 (3rd Cir. 2013) (explaining that the "prohibition" referred to in § 126(b) is not dependent on a standard established in a SIP that has already been approved). The Petition's analysis, as explained above, showed that those reductions do *not* satisfy that obligation for the identified sources.[8]

[8] EPA rejected Maryland's analysis based in part on the premise that the 30-day, lowest-ozone-season rate that it proposed was too low because it was based on years when the source's pollution control equipment was new and at its most efficient. 83 Fed. Reg. at 50,467. But each of the sources identified in Maryland's Petition had installed its controls between 1999 and 2004, and had operated them an

EPA also arbitrarily equated the *seasonal* emissions reductions purportedly achieved under the CSAPR Update with the *daily* emissions reductions sought by the Petition. The ozone NAAQS require states to remain below certain peak ozone levels, not seasonal average ozone levels. Specifically, an air quality monitor's design value—the calculation controlling whether an area is in attainment—is based on the fourth-highest daily eight-hour concentration in a season, averaged over three consecutive years. 80 Fed. Reg. at 12,265. Consistently operating and optimizing controls on each day of the ozone season is necessary to ensure that the identified sources meet their Good Neighbor obligations as to that standard. *See* 42 U.S.C. § 7426(c) (requiring a source violating the Good Neighbor Provision to either stop operating within three months or comply with a schedule containing increments of progress to eliminate the violation).

The CSAPR Update, by contrast, requires only *seasonal* emissions reductions. 83 Fed. Reg. at 50,467. Under the cap-and-trade program, an individual source may operate its installed controls on any given day in any matter it chooses—including by turning off controls altogether—so long as, at the end of the season, the source has enough allowances to cover its emissions. 81 Fed. Reg. at 74,568; 40 C.F.R. § 97.802 (defining "allowance transfer deadline"). Complying with the CSAPR

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average of three years before the ozone season used as the basis for Maryland's proposal. MDE Comments at 26-27, Table 7 [JA___].

Update may, or may not, result in reductions in the eight-hour peak levels on which NAAQS compliance depends. Emission rates at a particular source—including the identified sources—may well be greater on the high-ozone days used to determine NAAQS compliance.

Indeed, compliance with the CSAPR Update may not even result in *seasonal* reductions in a source's emissions. Under the CSAPR Update, a covered source may emit more $NO_x$ than its seasonal allocation so long as it holds an equivalent number of allowances at the end of the year. Thus, a source can simply purchase additional allowances (or use allowances banked from a previous season) to comply without actually reducing its own emissions. *See* 83 Fed. Reg. at 26,679 (discussing the ability of a covered unit to meet its allocation by any mechanism). That would be acceptable under the regional approach EPA followed in the CSAPR Update, but it does not satisfy the source-specific obligations under § 126. A source's ability to avoid even seasonal reductions in this manner only underscores that the CSAPR Update does not ensure the kinds of reductions necessary to attain and maintain an eight-hour ozone standard. That fact makes it even more illogical for EPA to rely on the CSAPR Update as foreclosing a finding that the identified sources interfere with maintenance of the ozone NAAQS.

Finally, while a cap-and-trade program may be appropriate as a partial FIP designed to reduce statewide emissions, it is no response to a § 126 petition seeking

regulation of particular sources on a *continuous* basis. Section 126 provides that "a major existing source" must shut down within three months of a finding under§ 126 unless "such source complies with emissions limitations and compliance schedules." 42 U.S.C. § 7426(c) (emphasis added). Section 302(k), in turn, defines "emissions limitation" as "a requirement that limits the quantity, rate, or concentration of emission of air pollutants *on a continuous basis*." 42 U.S.C. § 7602(k) (emphasis added). The CSAPR Update's cap-and-trade program does not actually limit the quantity, rate, or concentration of an individual source's emissions "on a continuous basis" and thus cannot satisfy § 126.

### D. Current Emissions Data From SCR-Equipped Units Do Not Warrant Denial of the Petition.

As an alternative to its position that the CSAPR Update categorically obviates the need for relief under § 126, EPA argues that, pursuant to the Update, sources have already implemented all cost-effective emissions reductions that can be achieved through optimization of installed controls. 83 Fed. Reg. at 50,445. In support, EPA points to emissions data from 2017, the first year of the Update's implementation, claiming that those data demonstrate that the Update is "reducing summertime $NO_x$ emissions" and that the identified sources are "collectively controlling" their $NO_x$ emissions. *Id.*; *see also id.* at 50,465 (finding the 2017 data shows "the control optimization and the emissions reductions anticipated from the CSAPR Update are being realized.") Putting aside the fact that a *regional* solution

is no substitute for a *source-specific* remedy, *see* pages 25-26 above, a closer look at the 2017 data shows that they do not support EPA's denial.

First of all, the 2017 data do not support EPA's position that the CSAPR Update has resolved Maryland's claim. To the contrary, they show that, as a class, the thirty-two identified SCR-equipped sources emit $NO_x$ at a rate that *exceeds* the CSAPR Update's 0.10 lb/mmBtu fleet-wide average in 2017. 83 Fed. Reg. at 50,465, Table 1 [JA ___] (calculating a collective average emissions rate of 0.115 lb/mmBtu).[9] Thirteen of the identified SCR-equipped sources had rates above 0.10 lb/mmBtu, and nineteen had rates above the 30-day rates that Maryland demonstrated were achievable. MDE Comments 37-38, Table 10 [JA ____]. The data thus continue to give cause for concern.

But even if the data were otherwise, the level of reductions that have *already* been achieved says nothing about what types of cost-effective reductions *can be* achieved. As to that issue, the CSAPR Update acknowledged that rates below 0.10 lbs/mmBtu are possible on a source-specific basis. *See* 81 Fed. Reg. at 74,544 (acknowledging that many individual units with SCR achieve rates lower than 0.075 lbs/mmBtu). And the 2017 data confirm that that is the case: Thirteen of the sources identified in Maryland's Petition were able to achieve emissions below Maryland's

[9] Table 1 erroneously states that thirty-four of the identified sources are controlled by SCR.

proposed 30-day rate in 2017. MDE Comments at 37-38, Table 10 [JA___]; *see also id.* at 26-27, Table 7 [JA ___]; EGU $NO_x$ Mitigation Strategies TSD at 2-3 [JA___] (accounting for proper component replacement and maintenance in its cost analysis to ensure that SCRs do not perform at lower reduction capabilities). This directly contradicts EPA's claim that the rates Maryland proposed cannot be reproduced in today's marketplace.

Finally, the *amount* of emissions-reduction potential is immaterial where cost-effective reductions are possible. EPA supported the denial by asserting that the Petition's air quality benefits are likely to be small, 83 Fed. Reg. at 50,467, but under EPA's own four-step methodology, the size of the emissions reduction is relevant only to a cost-effectiveness analysis—i.e., whether the size of reduction compared to cost of control is justified. Given that EPA has already determined that optimizing and continuously running SCRs is cost-effective, *see* page 22 above, the amount of the reduction should not matter.

In any event, granting the Petition would provide significant emissions reductions which are immediately achievable. EPA estimates that the CSAPR Update—covering 3,044 sources in 22 states—provided a 0.6 ppb improvement in Maryland's ozone levels. 83 Fed. Reg. at 50,467. Granting the Petition, by comparison, would provide an overall benefit of 0.656 ppb, and from just thirty-six sources. *Id.* And that remedy would have produced 920 fewer tons of $NO_x$

emissions during the 2017 ozone season—an amount that far exceeds the 672 tons of $NO_x$ emitted by *all* of the Maryland coal-fired power plants during the 2016 ozone season. MDE Comments at 22-23 [JA___]; Pet. App. A at 69 [JA___].

### E. EPA's Conclusion That It Is Not Cost-Effective to Run Installed SNCR Technology Is Arbitrary.

SNCR is an air pollution control technology that offers a less expensive, but also less efficient, alternative to SCR technology. EGU $NO_x$ Mitigation Strategies TSD, at 7 [JA___]. In denying the Petition as to sources already equipped with SNCR controls, EPA maintained that the CSAPR Update had determined that operation of such controls is "not cost-effective," and that failure to operate such controls therefore could not support Maryland's Petition. 83 Fed. Reg. at 50,469. Thus, EPA decided not to require operation of SNCR controls despite actual emissions data showing that SNCR-equipped units had previously achieved far lower $NO_x$ emissions rates. Pet. App. A at 5 [JA___]. That decision mischaracterizes the CSAPR Update, flies in the face of common sense, and flouts EPA's "statutory obligation to avoid 'under control' of emissions." *EPA v. EME Homer City Generation, L.P.*, 134 S.Ct. 1584, 1609 (2014).

First, the CSAPR Update did not conclude that the *only* cost-effective controls were those that cost $1,400 or less for each ton of $NO_x$ reduction. 81 Fed. Reg. at 74,550 (reasoning that "[t]his level of stringency in emission budgets represents the level at which [improvements] are maximized with respect to marginal cost"). To

be sure, the CSAPR Update calculated its emissions budgets with reference to a $1,400/ton cost threshold, equivalent to the cost of operating and optimizing existing SCR controls. But the CSAPR Update did not determine that all controls above that threshold were not cost effective. Rather, EPA chose to focus on the *most* cost-effective controls as part of its partial, CSAPR Update remedy. *See id*. at 74,549-50.

Regardless of what EPA deemed appropriate for purposes of the CSAPR Update, it clearly *is* cost-effective for the SNCR-equipped sources identified in the Petition to operate their controls. As a general matter, SNCR technology is commonly used throughout the country, including under the Act's Reasonably Available Control Technology ("RACT") requirements. *Id*. at 74,541; MDE Comments at 46-47 [JA___]; *see generally* 42 U.S.C. § 7511a(b)(2). RACT is "the lowest emissions limit that a particular source is capable of meeting by the application of control technology that is both reasonably available, as well as technologically and *economically feasible*." *See, e.g.*, 63 Fed. Reg. 38,755 (Jul. 20, 1998) (emphasis added). EPA rejected RACT as a comparator here, arguing that it is generally employed in nonattainment areas, rather than as way to get at pollution transport. 83 Fed. Reg. at 50,470. But that distinction is irrelevant; SNCR technology reduces $NO_x$, which EPA acknowledges is the primary pollutant of concern for reduction of interstate ozone transport. 82 Fed. Reg. at 51,245.

Further, the fact that four of the sources identified in Maryland's Petition have already invested the resources to install SNCR controls is difficult to square with EPA's categorical assertion that the operation of SNCRs cannot be cost-effective for these sources. In fact, all four of these sources have run their SNCR controls in the past, with high efficiency, achieving $NO_x$ emissions rates even lower than the fleet-wide SCR rate used for the CSAPR Update. *See* MDE Comments at 29-30, Table 8 [JA___] (noting best ozone season rates of 0.07 to 0.09 for the four identified sources). Even accepting the CSAPR Update's assumption that SNCR operation has a $3,400/ton cost, that does not necessarily mean that it is not cost-effective, as the real-world experience of these sources demonstrates. EPA cannot rationally rely on the CSAPR Update's assumptions about average SNCR operations, where source-specific data relevant to this Petition indicates otherwise.

## II. EPA IMPROPERLY REFUSED TO CONSIDER THE PETITION UNDER THE 2015 OZONE NAAQS.

EPA's refusal to consider the Petition under the more stringent 2015 Ozone NAAQS, on the grounds that Maryland did not specifically ask for a finding under that standard, likewise was arbitrary and capricious. *See* 83 Fed. Reg. at 50,463 (finding the Petition "refer[red] only to the 2008 ozone NAAQS when identifying alleged air quality problems in Maryland and the impacts from upwind sources.").

The Petition explained that if EPA granted the Petition within the 60-day timeline provided by § 126(b), the resulting emissions reductions could help

Maryland secure attainment designations under the 2015 Ozone NAAQS. Pet. at 9, 13 [JA__, ___]; *see also* MDE Comment at 48 [JA___]. But at the time the Petition was filed in November 2016, it would have been premature to seek a finding regarding a particular source's Good Neighbor violations under the 2015 Ozone NAAQS when attainment designations for that standard had not yet been issued.

But that changed as a result of EPA's delay in considering Maryland's Petition beyond the statutory 60-day deadline. During the period of EPA's delay, it issued the 2015 Ozone NAAQS and designated three areas in Maryland (comprising eleven counties and Baltimore City) as nonattainment under the 2015 NAAQS.[10] Having unlawfully delayed action, and then having designated these areas as nonattainment under the 2015 NAAQS, EPA should not be allowed to ignore those updated air quality standards in denying the Petition. Doing so conflicts with EPA's statutory obligation to ensure that the ozone NAAQS are achieved as expeditiously as practicable. *See* 42 U.S.C. § 7511(a)(1); *Natural Resources Defense Council v. Browner*, 57 F.3d 1122, 1127 (D.C. Cir. 1995).

[10] *See* 83 Fed. Reg. 25,776, 25,812 (June 4, 2018). Although EPA did not publish these designations in the Federal Register until June 4, 2018, the published version reflects that they were signed on April 30, 2018, *see id.* at 25,783—i.e., more than a month before the Administrator signed and published the agency's proposed denial of the Petition.

Ultimately, EPA's decision on this point elevates form over substance, for there is no statutory or regulatory requirement that a § 126 petition use any particular magic words to ensure that its petition is considered with reference to the most recent set of NAAQS. *Cf. Broderick v. Donaldson*, 437 F.3d 1226, 1232 (D.C. Cir. 2006) (Civil Rights Act complaint need not use magic words, so long as it alleges unlawful discrimination in some way); *Taylor v. Phoenixville School Dist.*, 184 F.3d 296, 313 (3rd Cir. 1999) (request under the Americans with Disabilities Act need not use magic words, so long as the employer is made aware of the desire for accommodations). And, as EPA admitted, the Petition *did* ask that the remedy "be implemented by 2017 to help areas in Maryland achieve attainment in time to inform area designations in the state for the 2015 ozone NAAQS." 83 Fed. Reg. at 50,447-48; 83 Fed. Reg. at 26,673. Under these circumstances, EPA's refusal to consider the more stringent 2015 Ozone NAAQS was arbitrary.[11]

[11] Additionally, the "logical outgrowth" doctrine did not prohibit EPA from making a finding under the 2015 Standard. *See* 83 Fed. Reg. at 50,463 (making this argument). As the record demonstrates, EPA's proposal put the public on notice of the issue, 83 Fed. Reg. at 26,673, and the agency received public comment on that matter from both sides. *See e.g.*, MDE Comments at 48-49 [JA__,__]; UARG Comments at 3-4 [JA__,__].

## CONCLUSION

For the reasons set forth above, EPA's denial of the Petition should be vacated, and the Petition should be remanded for EPA to impose appropriate source-specific emissions limitations at each of the identified sources.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

The undersigned attorney hereby certifies:

1. This document complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(i) and this Court's briefing order dated February 28, 2019 (Doc. No. 1775438). According to the word processing system used in this office, this document, exclusive of the sections excluded by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1), contains 8,015 words—and in conjunction with the consolidated Petitioners' briefs, is below the cumulative word total of 21,000 words allotted in this Courts briefing order, Doc. No. 1775438.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface in 14-point Times New Roman.

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## CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2019, the foregoing Opening Proof Brief of Petitioner the State of Maryland was electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit through the Court's CM/ECF system, which effected service upon counsel of record through the Court's system.

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**ORAL ARGUMENT NOT YET SCHEDULED**

Case No. 18-1285 (and consolidated cases)

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

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**STATE OF MARYLAND, *et al.*,**

*Petitioners*,

**v.**

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

*Respondents.*

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On Petition for Review of Final Action by the
United States Environmental Protection Agency
83 Fed. Reg. 50,444 (Oct. 5, 2018)

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# ADDENDUM TO OPENING PROOF BRIEF FOR PETITIONER STATE OF MARYLAND

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March 29, 2019

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42 U.S.C. § 7607 ..... MD APP 59

**CODE OF FEDERAL REGULATIONS**

40 C.F.R. § 97.802 (excerpt) ..... MD APP 66

**LEGISLATIVE HISTORY**

H.R. Rep. No. 95-294 (excerpt) ..... MD APP 68

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

Notes of Decisions (58)

42 U.S.C.A. § 7407, 42 USCA § 7407
Current through P.L. 116-5. Title 26 current through 116-9.

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. § 7408

# § 7408. Air quality criteria and control techniques

Effective: November 10, 1998
Currentness

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(e) Transportation planning and guidelines**

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

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

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

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

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

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

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

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

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

**(i)** programs for improved public transit;

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

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

**(iv)** trip-reduction ordinances;

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

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

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

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

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

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

**(xi)** programs to control extended idling of vehicles;

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

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

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

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

**(xvi)** program to encourage the voluntary removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model light duty trucks. [1]

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

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

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

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

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

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

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

**(g) Assessment of risks to ecosystems**

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

**(h) RACT/BACT/LAER clearinghouse**

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

**CREDIT(S)**

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

Notes of Decisions (15)

Footnotes

1 So in original. The period probably should be a semicolon.

42 U.S.C.A. § 7408, 42 USCA § 7408

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Title 42. The Public Health and Welfare
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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 Pub.L. 91-604, § 4(a), Dec. 31, 1970, 84 Stat. 1679; amended Pub.L. 95-95, Title I, § 106, Aug. 7, 1977, 91 Stat. 691.)

Notes of Decisions (85)

42 U.S.C.A. § 7409, 42 USCA § 7409
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End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

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

Notes of Decisions (368)

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. 116-5. Title 26 current through 116-9.

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. § 7426

# § 7426. Interstate pollution abatement

Currentness

**(a) Written notice to all nearby States**

Each applicable implementation plan shall--

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

**(A)** subject to part C of this subchapter (relating to significant deterioration of air quality) or

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

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

**(2)** identify all major existing stationary sources which may have the impact described in paragraph (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources not later than three months after August 7, 1977.

**(b) Petition for finding that major sources emit or would emit prohibited air pollutants**

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

**(c) Violations; allowable continued operation**

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

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

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

The Administrator may permit the continued operation of a source referred to in paragraph (2) beyond the expiration of such three-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirements contained in section 7410(a)(2)(D)(ii) of this title or this section as expeditiously as practicable, but in no case later than three years after the date of such finding. Nothing in the preceding sentence shall be construed to preclude any such source from being eligible for an enforcement order under section 7413(d) of this title after the expiration of such period during which the Administrator has permitted continuous operation.

**CREDIT(S)**

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

Notes of Decisions (14)

42 U.S.C.A. § 7426, 42 USCA § 7426
Current through P.L. 116-5. Title 26 current through 116-9.

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. § 7506a

# § 7506a. Interstate transport commissions

Currentness

**(a) Authority to establish interstate transport regions**

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

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

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

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

**(b) Transport commissions**

**(1) Establishment**

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

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

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

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

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

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

**(2) Recommendations**

The transport commission shall assess the degree of interstate transport of the pollutant or precursors to the pollutant throughout the transport region, assess strategies for mitigating the interstate pollution, and recommend to the Administrator such measures as the Commission determines to be necessary to ensure that the plans for the relevant States meet the requirements of section 7410(a)(2)(D) of this title. Such commission shall not be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

**(c) Commission requests**

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

**CREDIT(S)**

(July 14, 1955, c. 360, Title I, § 176A, as added Pub.L. 101-549, Title I, § 102(f)(1), Nov. 15, 1990, 104 Stat. 2419.)

Notes of Decisions (1)

42 U.S.C.A. § 7506a, 42 USCA § 7506a
Current through P.L. 116-5. Title 26 current through 116-9.

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

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 Pub.L. 101-549, Title I, § 103, Nov. 15, 1990, 104 Stat. 2423.)

Notes of Decisions (22)

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. 116-5. Title 26 current through 116-9.

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

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 Pub.L. 101-549, Title I, § 103, Nov. 15, 1990, 104 Stat. 2426; amended Pub.L. 104-70, § 1, Dec. 23, 1995, 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. 116-5. Title 26 current through 116-9.

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

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 Pub.L. 101-549, Title I, § 103, Nov. 15, 1990, 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. 116-5. Title 26 current through 116-9.

End of Document

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. § 7602

# § 7602. Definitions

Currentness

When used in this chapter--

**(a)** The term "Administrator" means the Administrator of the Environmental Protection Agency.

**(b)** The term "air pollution control agency" means any of the following:

**(1)** A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this chapter.

**(2)** An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution.

**(3)** A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency.

**(4)** An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

**(5)** An agency of an Indian tribe.

**(c)** The term "interstate air pollution control agency" means--

**(1)** an air pollution control agency established by two or more States, or

**(2)** an air pollution control agency of two or more municipalities located in different States.

**(d)** The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

**(e)** The term "person" includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

**(f)** The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

**(g)** The term "air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.

**(h)** All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

**(i)** The term "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

**(j)** Except as otherwise expressly provided, the terms "major stationary source" and "major emitting facility" mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

**(k)** The terms "emission limitation" and "emission standard" mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter.. [1]

**(l)** The term "standard of performance" means a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

**(m)** The term "means of emission limitation" means a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution characteristics).

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. § 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 Pub.L. 91-604, § 12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub.L. 92-157, Title III, § 302(a), Nov. 18, 1971, 85 Stat. 464; Pub.L. 93-319, § 6(c), June 22, 1974, 88 Stat. 259; Pub.L. 95-95, Title III, §§ 303(d), 305(a), (c), (f)-(h), Aug. 7, 1977, 91 Stat. 772, 776, 777; Pub.L. 95-190, § 14(a)(79), (80), Nov. 16, 1977, 91 Stat. 1404; 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), Nov. 15, 1990, 104 Stat. 2469, 2470, 2574, 2681-2684.)

Notes of Decisions (353)

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. 116-5. Title 26 current through 116-9.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 97. Federal $NO_X$ Budget Trading Program, Cair $NO_X$ and $so_2$ Trading Programs, Csapr $NO_X$ and $so_2$ Trading Programs, and Texas $so_2$ Trading Program (Refs & Annos)
Subpart Eeeee. Csapr $NO_X$ Ozone Season Group 2 Trading Program (Refs & Annos)

**40 C.F.R. § 97.802**

**§ 97.802** Definitions.

**Effective: December 27, 2016**
**Currentness**

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym "CSAPR" shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym "TR" in place of the acronym "CSAPR":

Acid Rain Program means a multi-state $SO_2$ and $NO_X$ air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

Allocate or allocation means, with regard to CSAPR $NO_X$ Ozone Season Group 2 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart, § 97.526(c), and any SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(6), (7), (8), or (9) of this chapter, of the amount of such CSAPR $NO_X$ Ozone Season Group 2 allowances to be initially credited, at no cost to the recipient, to:

(1) A CSAPR $NO_X$ Ozone Season Group 2 unit;

(2) A new unit set-aside;

(3) An Indian country new unit set-aside; or

(4) An entity not listed in paragraphs (1) through (3) of this definition;

(5) Provided that, if the Administrator, State, or permitting authority initially credits, to a CSAPR $NO_X$ Ozone Season Group 2 unit qualifying for an initial credit, a credit in the amount of zero CSAPR $NO_X$ Ozone Season Group 2 allowances, the CSAPR $NO_X$ Ozone Season Group 2 unit will be treated as being allocated an amount (i.e., zero) of CSAPR $NO_X$ Ozone Season Group 2 allowances.

Allowable $NO_X$ emission rate means, for a unit, the most stringent State or federal $NO_X$ emission rate limit (in lb/MWh or, if in lb/mmBtu, converted to lb/MWh by multiplying it by the unit's heat rate in mmBtu/MWh) that is applicable to the unit and covers the longest averaging period not exceeding one year.

Allowance Management System means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR $NO_X$ Ozone Season Group 2 allowances under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

Allowance Management System account means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, auction, holding, transfer, or deduction of CSAPR $NO_X$ Ozone Season Group 2 allowances.

Allowance transfer deadline means, for a control period in a given year, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately after such control period and is the deadline by which a CSAPR $NO_X$ Ozone Season Group 2 allowance transfer must be submitted for recordation in a CSAPR $NO_X$ Ozone Season Group 2 source's compliance account in order to be available for use in complying with the source's CSAPR $NO_X$ Ozone Season Group 2 emissions limitation for such control period in accordance with §§ 97.806 and 97.824.

Alternate designated representative means, for a CSAPR $NO_X$ Ozone Season Group 2 source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR $NO_X$ Ozone Season Group 2 Trading Program. If the CSAPR $NO_X$ Ozone Season Group 2 source is also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $SO_2$ Group 1 Trading Program, or CSAPR $SO_2$ Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

Assurance account means an Allowance Management System account, established by the Administrator under § 97.825(b)(3) for certain owners and operators of a group of one or more base CSAPR $NO_X$ Ozone Season Group 2 sources and units in a given State (and Indian country within the borders of such State), in which are held CSAPR $NO_X$ Ozone Season Group 2 allowances available for use for a control period in a given year in complying with the CSAPR $NO_X$ Ozone Season Group 2 assurance provisions in accordance with §§ 97.806 and 97.825.

Auction means, with regard to CSAPR $NO_X$ Ozone Season Group 2 allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(6), (8), or (9) of this chapter, of such CSAPR $NO_X$ Ozone Season Group 2 allowances to be initially recorded in an Allowance Management System account.

Authorized account representative means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of CSAPR $NO_X$ Ozone Season Group 2 allowances held in the general account and, for a CSAPR $NO_X$ Ozone Season Group 2 source's compliance account, the designated representative of the source.

Automated data acquisition and handling system or DAHS means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other

H.R. REP. 95-294, H.R. Rep. No. 294, 95TH Cong., 1ST Sess.
1977, 1977 U.S.C.C.A.N. 1077, 1977 WL 16034 (Leg.Hist.)
**1077 P.L. 95-95, CLEAR AIR ACT AMENDMENTS OF 1977
House Report (Interstate and Foreign Commerce Committee) No. 95-294,
May 12, 1977 (To accompany H.R. 6161)
Senate Report (Environment and Public Works Committee) No. 95-127,
May 10, 1977 (To accompany S. 252)
House Conference Report No. 95-564,
Aug. 3, 1977 (To accompany H.R. 6161)
Cong. Record Vol. 123 (1977)
DATES OF CONSIDERATION AND PASSAGE
House May 26, August 4, 1977
Senate June 10, August 4, 1977
The House bill was passed in lieu of the Senate bill. The House Report,
the House Conference Report, and a Clarifying Statement are set out.

(CONSULT NOTE FOLLOWING TEXT FOR INFORMATION ABOUT OMITTED MATERIAL. EACH COMMITTEE REPORT IS A SEPARATE DOCUMENT ON WESTLAW.)

## HOUSE REPORT NO. 95-294

May 12, 1977

CONTENTS

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

**1079 *1 The Committee on Interstate and Foreign Commerce (to whom was referred the bill (H.R. 6161) to amend the Clean Air Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

### STATEMENT OF PURPOSES AND SUMMARY OF LEGISLATION

Because the Committee Proposal portion of this report incorporates a detailed section-by-section analysis of the provisions of H.R. 6161, for following Statement of Purposes and section-by-section summary has been prepared to provide a concise explanation of the proposed legislation.

### STATEMENT OF PURPOSES

In the view of the Committee on Interstate and Foreign Commerce, this bill (H.R. 6161) is needed for several main purposes:

(1) to extend authorizations of appropriations for nonresearch activities under the Clean Air Act;

(2) to provide a greater role and greater assistance for State and local governments in the administration of the Clean Air Act;

We believe that Congress has left to the sound discretion of the Administrator the determination of what degree of governmental cooperation and other measures are necessary to insure non-interference with the attainment and maintenance of national standards * * * We are satisfied that the proposed information exchange is a viable means for accomplishing the statutory end. [331]

**1409 *330 In the committee's view, however, the existing law (as interpreted by the Administrator) is an inadequate answer to the problem of interstate air pollution. This is so for five basic reasons. First, an information exchange without adequate procedures to act on that information is simply insufficient. Second, an effective interstate air pollution control program must include not only prevention of interstate air pollution from new sources but also abatement of pollution from existing sources. Third, an effective program must also be designed to prevent significant deterioration (within the meaning of section 108 of the bill) of air quality and to protect visibility under section 116 of the bill from interstate air pollution. Fourth, an effective program must not rely on prevention or abatement action by the State in which the source of the pollution is located, but rather by the State (or residents of the State) which receives the pollution and the harm, and thus which has the incentive and need to act. Fifth, an effective program must include a Federal mechanism for resolving disputes which cannot be decided through cooperation and consultation between the States or persons involved.

The existing law (at least as interpreted by the Administrator) fails to meet these five tests for an effective interstate pollution abatement program. The problem of interstate air pollution remains a serious one that requires a better solution, according to testimony at the 1975 hearings (H. 739-40). For this reason, the committee adopted section 309 of the bill.

## COMMITTEE PROPOSAL

Section 309 of the committee bill revises section 110(a)(2)(E) of the act and adds a new section 126 to the act. These new provisions are intended to establish an effective mechanism for prevention, control, and abatement of interstate air pollution. Section 309 of the bill incorporates the five elements for an effective program for control of interestate pollution referred to in the discussion above.

The provision requires the Administrator to promulgate a procedure for the abatement of interstate air pollution. These regulations must be promulgated within 9 months after date of enactment of the 1977 amendments. The regulations are intended to directly amend all applicable implementation plans to include the following provisions: (1) a preconstruction permit requirement for major new (or modified) sources which may contribute significantly to air pollution outside the State of location; (2) a requirement for prior notice to States which will be receiving the pollution from these new (or modified) sources; [332] and (3) a requirement for review and identification within 18 months of the major existing sources of interstate air pollution.

The Administrator's regulations shall also include authority for any State or political subdivision to petition the Administrator for a finding that any new, modified, or existing stationary source in any other State is (or would be) emitting pollutants which cause or contribute to impermissible interstate air pollution. Interstate air pollution would be impermissible if it would prevent timely attainment or maintenance of any national amibent air quality standard after the specified attainment *331 **1410 date or if it would interfere with prevention of significant deterioration or visibility protection requirements in another State.

If the Administrator receives such a petition, he must provide opportunity for a public hearing and must grant or deny the petition in 60 days. If he grants the petition with respect to an existing source, then that source must cease emitting such pollutant(s) within 6 months. In the case of such an existing source the Administrator may in his discretion prescribe

compliance schedules and emission limits to permit the continued operation of the source beyond the 6-month limit and, if he does so and the source complies, it may continue its operation.

In the case of a petition granted with respect to a new or modified source, then that source may not continue to construct or to emit such pollutants more than 60 days after the granting of the petition.

This petition process is intended to expedite, not delay, resolution of interstate pollution conflicts. Thus, it should not be viewed as an administrative remedy which must be exhausted prior to bringing suit under section 304 of the act. Rather, the committee intends to create a second and entirely alternative method and basis for preventing and abating interstate pollution. The existing provision prohibiting any stationary source from causing or contributing to air pollution which interferes with timely attainment or maintenance or a national ambient air standard (or a prevention of significant deteriorating or visibility protection plan [333] ) in another State is retained. A new provision prohibiting any source from emitting any pollutant after the Administrator has made the requisite finding and granted the petition is an independent basis for controlling interstate air pollution.

By these provisions, the committee intends to overcome the five major defects with the existing law, at least as interpreted by EPA.

## SECTION 310-INTERAGENCY COOPERATION ON PREVENTION OF ENVIRONMENTAL CANCER AND HEART AND LUNG DISEASE

### BACKGROUND

In 1970, when Congress last addressed the Clean Air Act in a comprehensive fashion, almost all emphasis was placed on the impact of air pollution in producing or aggravating respiratory diseases, such as chronic bronchitis, emphysema, and asthma. This emphasis reflected the current status of knowledge about air pollution-related disease. In turn, this emphasis was reflected in the national ambient air quality standards, to the virtual exclusion of protection against air pollution levels which may cause or contribute to cancer, birth defects, or genetic damage. See discussion of section 108 of the bill.

Recent information provides a basis for real alarm about the rise of cancer deaths and the relationships of environmental pollution to cancer.

**1411 *332 This concern prompted the committee to adopt provisions through the bill designed to prevent, reduce or eliminate exposures to potentially cancer causing or cancer promoting air pollutants. Thus, in section 101, the committee directed EPA to initiate a rulemaking proceeding likely to lead to control of four currently unregulated pollutants known to have carcinogenic or cocarcinogenic properties. In section 102, a standard of proof was adopted to permit regulation of other pollutants reasonably suspected of being carcinogenic or cancer promoting even if conclusive proof of their human cancer-causing properties has not been proven conclusively. In section 106, certain measures in existing law were ratified so as to reduce emissions rather than disperse them over a wider area. In section 107, measures to prevent increased skin cancers have been authorized. In section 108, the existing policy of limiting deterioration of air quality in clean air areas has been ratified and further defined. Other measures in the bill are also intended to reduce the risk of air pollution-related cancers.

While these regulatory measures will be helpful in responding to the air pollution aspect of the problem, other potential environmental sources of cancer must be examined and reduced. Also the research effort must dovetail more closely with the regulatory effort, so that regulations may be supported by sufficient information and so that areas where regulation is inadequate can be discovered.