

ORAL ARGUMENT SCHEDULED FOR APRIL 8, 2005

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 03-1361
(Consolidated with Nos. 03-1362 through 03-1368)

COMMONWEALTH OF MASSACHUSETTS, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

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

FINAL BRIEF FOR THE INTERVENOR STATES OF MICHIGAN,
TEXAS, IDAHO, NORTH DAKOTA, UTAH, SOUTH DAKOTA,
ALASKA, KANSAS, NEBRASKA, AND OHIO, AND THE AMICUS
STATE OF INDIANA IN SUPPORT OF RESPONDENT UNITED
STATES ENVIRONMENTAL PROTECTION AGENCY

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CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

A. Parties and Amici

Except for the Commonwealth of the Northern Mariana Islands, all parties, intervenors, and amici appearing in this court are listed in the Brief for the Petitioners. Petitioner Commonwealth of the Northern Mariana Islands withdrew from these consolidated cases pursuant to a Stipulation of Withdrawal dated August 27, 2004.

B. Rulings Under Review

References to the rulings at issue appear in the Brief for the Petitioners.

C. Related Cases

The rulings on review were not previously before this Court or any other court. There are no related cases currently pending.

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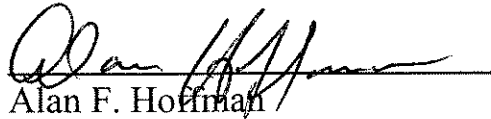
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GLOSSARY

CO ₂	Carbon Dioxide
CAA	Clean Air Act
HFC	Hydrofluorocarbon
CH ₄	Methane
NAAQS	National Ambient Air Quality Standards
NO _x	Nitrogen Oxides
N ₂ O	Nitrous Oxide
SIP	State Implementation Plans
EPA	United States Environmental Protection Agency

JURISDICTIONAL STATEMENT

The undersigned Intervenor States and the Amicus State of Indiana adopt the Jurisdictional Statement contained in the Brief of the United States Environmental Protection Agency.

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Does EPA lack the authority under the Clean Air Act ("CAA" or "Act") to regulate the emission of carbon dioxide and other greenhouse gases to address global climate change?

STATUTES AND REGULATIONS

Pertinent provisions are provided in the Addendum attached hereto.

STATEMENT OF THE CASE

On October 23, 2003, Petitioners filed this action challenging the denial by the United States Environmental Protection Agency ("EPA") of a petition for rulemaking that sought the regulation of emissions of carbon dioxide ("CO₂") and other greenhouse gases from new motor vehicles and new motor vehicle engines under Section 202 of the CAA, 42 U.S.C. § 7521. The petition for rulemaking was filed by the International Center for Technology Assessment and several other organizations who claim that CO₂ and other greenhouse gases contribute significantly to global climate change. 68 Fed. Reg. 52,922, 52,922-23 (Sept. 8, 2003).

EPA's denial of the petition was based on the agency's position that the CAA "does not authorize EPA to regulate for global climate change purposes[.]" *Id.*, at 52,925. EPA therefore determined that CO₂ and other greenhouse gases cannot be considered "air pollutants" subject to the CAA's regulatory provisions for any contribution they may make to global climate change. *Id.* EPA's position was set forth in a memorandum dated August 28, 2003 from EPA's then-General Counsel, Robert E. Fabricant. *Id.* The General Counsel's memorandum was adopted as the agency's position in its denial of the petition for rulemaking. *Id.*

Petitioners seek judicial review of both the denial of the petition for rulemaking and the General Counsel's memorandum. The undersigned ten states have intervened to support EPA in these consolidated cases (the "State Intervenors"). The Amicus State of Indiana was directed by this Court to file a joint brief with the ten State Intervenors.

STATEMENT OF FACTS

I. Statutory Background

The CAA, 42 U.S.C. §§ 7401-7671q, establishes an "intergovernmental partnership" in which the federal government and the states share responsibility for the nation's air quality. *Michigan v. EPA*, 268 F.3d 1075, 1078 (D.C. Cir. 2001). Sections 108 and 109 of the Act authorize EPA to establish national ambient air quality standards ("NAAQS") for certain air pollutants. Section 108(a) directs

EPA to create a list of air pollutants that "in the Administrator's judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" and whose presence in the air is from "numerous or diverse mobile or stationary sources." 42 U.S.C. § 7408(a)(1). The pollutants on the list are commonly referred to as 'criteria' pollutants because section 108 requires EPA to develop "air quality criteria" for the listed pollutants that "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" 42 U.S.C. § 7408(a)(2).

Under section 109 of the Act, EPA is to promulgate NAAQS to protect against adverse health and welfare effects for each pollutant identified under section 108. EPA then designates the areas of the United States that do not meet the NAAQS. 42 U.S.C. § 7407(d).

States have "primary responsibility" under the Act for assuring that air quality within their borders meets the national standards. 42 U.S.C. § 7407(a); *Arizona Pub. Serv. Comm'n v. EPA*, 211 F. 3d 1280, 1285 (D.C. Cir. 1990). States satisfy this burden by submitting to EPA state implementation plans ("SIPs") that provide for the attainment of the NAAQS. 42 U.S.C. § 7410. SIPs must include enforceable emissions limitations for sources of air pollution within a state and other control measures or techniques that are "necessary or appropriate" to meet

the NAAQS, as well as a program for enforcing such measures. 42 U.S.C. § 7410(a)(2)(A).

Although much air pollution is a local or regional problem, some pollution that results in the non-attainment of a NAAQS "is caused or augmented by emissions" from sources beyond a state's borders. *Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1037 (D.C. Cir. 2001). The CAA contains certain provisions to address emissions from "upwind" states that pollute "downwind" states. *Id.*

Among the provisions that address the interstate transport of emissions is section 110(a)(2)(D)(i)(I), 42 U.S.C. § 7410(a)(2)(D)(i)(I). That section requires a state's SIP to contain provisions to prohibit emissions within the state which "contribute significantly to nonattainment in, or interfere with maintenance by, any other State" of the NAAQS. *Id.*

Section 126 of the Act authorizes a downwind state to petition EPA to regulate upwind sources of air pollution that contribute significantly to the downwind state's inability to meet a NAAQS. 42 U.S.C. § 7426(b). If EPA finds that an upwind source of pollution is contributing significantly to the nonattainment, the source may not operate unless it complies with emission limitations and compliance schedules which "bring about compliance . . . as expeditiously as practicable, but in no case later than three years after the date of such finding." 42 U.S.C. § 7426(c).

In addition to the relief available to states under section 126, a state can also sue an upwind source directly when it is contributing to the downwind state's nonattainment due to, among other things, the violation of an emission limitation. 42 U.S.C. 7604(a). Such suits may be initiated under the citizen suit provision contained in section 304 of the Act. *Id.* See e.g., *United States v. Ohio Edison Co.*, No. C2-99-1181 (S.D. Ohio 1999)(in which the states of New York and Connecticut filed complaints in intervention under section 304's citizen suit provision).

Notably, the CAA does not contain *any* provision for states to reduce or eliminate emissions from sources of air pollution located outside of the United States.

II. Procedural Background

On October 20, 1999, Petitioner International Center for Technology Assessment and 18 other organizations filed a petition for rulemaking (the "ICTA Petition") asking EPA to regulate certain greenhouse gas emissions from new motor vehicles and engines under section 202(a)(1) of the CAA, 42 U.S.C. § 7521(a)(1). In particular, the petition sought the regulation of CO₂, methane ("CH₄"), nitrous oxide ("N₂O"), and hydrofluorocarbon ("HFC") emissions from new motor vehicles and engines. Section 202(a)(1) of the Act states that EPA shall prescribe "standards applicable to the emission of any air pollutant from any class

or classes of new motor vehicles . . . which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." *Id.* The petitioners claim that CO₂ and other greenhouse gases are air pollutants that contribute significantly to global climate change. 68 Fed. Reg. 52,922, 52,922-23 (Sept. 8, 2003).

On September 8, 2003, EPA denied the ICTA Petition. *Id.* EPA concluded that the CAA "does not authorize EPA to regulate for global climate change purposes[.]" *Id.*, at 52,925. The agency therefore determined that CO₂ and other greenhouse gases cannot be considered "air pollutants" subject to the Act's regulatory provisions for any contribution they may make to global climate change. *Id.* EPA also stated that in light of its conclusion that the CAA does not authorize regulation to address global climate change, greenhouse gases "are not air pollutants under the CAA's regulatory provisions, *including sections 108, 109, 111, 112 and 202.*" *Id.*, at 52,928 (emphasis supplied).

In reaching its conclusion, EPA analyzed the text and history of the CAA as well as other congressional actions specifically addressing global climate change. EPA also emphasized that the Supreme Court's ruling in *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000), requires that the agency be cautious about "using broadly worded statutory authority to regulate in

areas raising unusually significant economic and political issues when Congress has specifically addressed those areas in other statutes." *Id.*, at 52,925.

In addition, EPA noted that the NAAQS system "is fundamentally inadequate when it comes to a substance like CO₂, which is emitted globally and has relatively homogenous concentrations around the world." *Id.*, at 52,927. EPA explained that "any CO₂ standard that might be established would in effect be a worldwide ambient air quality standard, not a national standard -- the entire world would be either in compliance or out of compliance." *Id.* Moreover, EPA noted that the "limited flexibility provided in the Act to address the impacts of foreign pollution transported to the U.S. was not designed to address the challenges presented by long-lived global atmospheric pools such as exists for CO₂." *Id.*

EPA's position was contained in a memorandum dated August 28, 2003 by EPA's then-General Counsel, Robert E. Fabricant (the "Fabricant Memorandum"). *Id.*, 52,925. The Fabricant Memorandum was adopted as the agency's position in its denial of the petition for rulemaking "and for all other relevant purposes under the [Act]." *Id.*

Petitioners seek judicial review of both the ICTA Petition denial and the Fabricant Memorandum.

STANDARD OF REVIEW

Judicial review of EPA's refusal to initiate a rulemaking requires a determination of whether the agency's decision was "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law" under section 706(a)(2) of the Administrative Procedures Act, 5 U.S.C. § 706(a)(2). *American Horse Protection Ass'n v. Lyng*, 812 F.2d 1, 3-5 (D.C. Cir. 1987). The Court is to apply "an extremely deferential standard of review" and should grant the petitions for review "only in the rarest and most compelling of circumstances." *Consumer Fed'n of America v. Consumer Product Safety Comm'n*, 883 F.2d 1073, 1078 (D.C. Cir. 1989)(quoting *WWHT, Inc. v Federal Communications Comm'n.*, 665 F.2d 807, 818 (D.C. Cir. 1981)). Compelling circumstances "primarily involve plain errors of law, suggesting that the agency has been blind to the source of its delegated power." *Id.* (quoting *State Farm Mut. Ins. Co. v. Department of Transp.*, 680 F.2d 206, 221 (D.C. Cir. 1982), *vacated on other grounds sub nom., Motor Vehicle Mfrs. Ass'n, v. State Farm Mut. Ins. Co.*, 463 U.S. 29 (1983)).

The issue of whether the CAA authorizes EPA to regulate emissions of greenhouse gases to address global climate change is a legal question of statutory interpretation, and the Court's analysis is governed by *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). See *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132

(2000)(analysis of agency's construction of a statute it administers is governed by *Chevron*). Under *Chevron*, the Court first asks "whether Congress has directly spoken to the precise question at issue." 467 U.S. at 842. If Congress has done so, the Court "must give effect to the unambiguously expressed intent of Congress." *Id.*, at 843. In determining whether Congress has specifically addressed the question at issue, "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989). If, however, "the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 843.

SUMMARY OF ARGUMENT

The CAA does not authorize the EPA to regulate the emission of greenhouse gases for the purpose of addressing global climate change. One of the key regulatory provisions in the Act is the NAAQS system under which the states have the primary responsibility for controlling air pollution to meet the national standards. The NAAQS system, however, addresses air quality at or near the earth's surface; it does not address greenhouse gases at many of the altitudes at which they occur. In addition, the CAA does not provide states with the power to compel a reduction in the emissions of greenhouse gases from foreign countries

that come to be located in a state. In light of the homogenous concentrations of CO₂ throughout the atmosphere and the substantial emissions of CO₂ from foreign sources, a NAAQS for CO₂ would impose an air quality standard on the states that would be impossible for them to meet. Such a regulatory scheme is implausible and could not have been intended by Congress.

ARGUMENT

In its denial of the ICTA Petition, EPA concluded that the CAA does not provide the agency with the authority to regulate CO₂ and other greenhouse gas emissions to address global climate change. 68 Fed. Reg. 52,922, 52,925 (Sept. 8, 2003). EPA's determination that nothing in the CAA expressly or implicitly provides any such authority was based upon the text and structure of the Act, its legislative history, and other congressional action specifically addressing global climate change.

Among the Act's regulatory provisions that EPA analyzed was the NAAQS system. EPA explained that atmospheric concentrations of CO₂ are fairly consistent globally and that a NAAQS for CO₂ "could not be attained by any area of the U.S. until such a standard were attained by the entire world as a result of emission controls implemented in countries around the world." *Id.*, at 52,927. The NAAQS system -- "a key CAA regulatory mechanism" -- could not therefore effectively address global climate change. *Id.* The NAAQS system was one of the

many sections of the Act that EPA examined which confirm that Congress did not authorize regulation under the Act to address global climate change.

The NAAQS system must be considered because it is not only a key regulatory mechanism in the CAA; it also contains one of the same factors to be considered by the Administrator of EPA for imposing a regulatory standard for the emission of an air pollutant as that in section 202, *i.e.*, a standard shall be prescribed if, in the Administrator's judgment, particular emissions "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. §§ 7408(a)(1)(A), 7521(a)(1). Just as section 108 of the NAAQS system does not and cannot address global climate change, so too does section 202 fail to authorize EPA to regulate for purposes of global climate change.¹

The following discussion identifies additional statutory provisions of the NAAQS system, and their impact on the states, that reinforce the conclusion that the Act clearly does not authorize EPA to regulate greenhouse gas emissions for the purpose of global climate change.

¹ Although it is instructive to analyze section 108 and the NAAQS system, the State-Intervenors note that the ICTA Petition was filed pursuant to section 202 seeking regulation of greenhouse gas emissions only from new motor vehicles and engines. Indeed, the factors to be considered in determining whether EPA has the authority to regulate greenhouse gases under section 202 are not the same as those under section 108.

I. The NAAQS system does not address CO₂ at many of the altitudes where it exists.

As noted previously, EPA sets the NAAQS and the states have the "primary responsibility" for assuring that the air quality within their borders meet them. 42 U.S.C. § 7407(a). Importantly, the NAAQS address "ambient air." That term is defined in the federal regulations as "that portion of the atmosphere, external to buildings, to which the general public has access." 40 C.F.R. § 50.1(e). In other words, the NAAQS system regulates air pollution that occurs at or near the earth's surface. *See Train v. Natural Resources Defense Council*, 421 U.S. 60, 65 (1975)("ambient air" is "the statute's term for the outdoor air used by the general public").

CO₂ and other greenhouse gases are, however, located throughout the atmosphere, including altitudes far above the earth's surface. In its denial of the ICTA Petition, EPA explained that CO₂ resides in the earth's atmosphere for 50 to 200 years and "is well mixed throughout the atmosphere, up to approximately the lower stratosphere." 68 Fed. Reg. at 52,927. Commercial airlines fly in the lower stratosphere, which is between 10 and 30 kilometers above sea level. EPA's Ozone Depletion Glossary at <http://www.epa.gov/docs/ozone/defns.html>. Much of the CO₂ in the earth's atmosphere is, therefore, not located in the ambient air. The

NAAQS system simply does not address CO₂ and other greenhouse gases at many of the altitudes at which they occur.

II. It would be impossible for the States to achieve a NAAQS for CO₂.

A NAAQS for CO₂ would place states in the impossible situation of having to attain that standard but lacking the means to achieve it. One of the principal tools that states use to attain a NAAQS is limiting emissions from sources within their borders. 42 U.S.C. § 7410(a)(2)(A). Such emission limitations must be included in the SIPs that the states submit to EPA for the agency's approval. *Id.*

The tools available to a state under the CAA include provisions to address air pollution from other states that contribute to the "downwind" state's nonattainment. The Act requires that SIPs prohibit emissions that contribute significantly to the nonattainment of a NAAQS in another state. 42 U.S.C. § 7410(a)(2)(D). States that suffer from pollution transported from "upwind" sources that contribute significantly to the "downwind" states' nonattainment can petition EPA for relief under section 126. 42 U.S.C. § 7426(b). In addition, states may use the citizen suit provision in section 304 of the Act, 42 U.S.C. § 7604(a), to sue upwind sources directly when they are contributing to the downwind states' nonattainment. The Act also includes an "acid rain program" to deal with the interstate transport of emissions of sulfur dioxide and nitrogen oxides ("NO_x") that contribute to acid rain. 42 U.S.C. §§ 7651-7651o. Finally, the Act includes a

cooperative regional strategy to control the interstate transport of NO_x and other ozone precursors. Section 184 of the CAA establishes an Ozone Transport Region covering 11 northeastern states and the District of Columbia metropolitan area, and a Northeast Ozone Transport Commission to assess ozone transport throughout the region and to recommend control measures to EPA. 42 U.S.C. § 7511c.

In the case of greenhouse gases, a large percentage of the worldwide CO₂ emissions come from outside of the United States. *See* 68 Fed. Reg. at 52,925-29. However, nothing in the CAA gives states the authority or the means to control greenhouse gas emissions from outside of the United States that adversely affect states' air quality. A NAAQS for CO₂ would result in states having to attain an air quality standard but lacking the power to affect many of the emission sources that are contributing to their nonattainment. It would be impossible for states to attain a NAAQS for CO₂ given the global emissions of CO₂ and the consistent concentrations of that substance throughout the world's atmosphere. As EPA noted, "[t]he statutory NAAQS implementation regime is fundamentally inadequate when comes to a substance like CO₂, which is emitted globally and has relatively homogenous concentrations around the world." *Id.*, at 52,927. Similarly, EPA emphasized that the "globally-pervasive nature of CO₂ emissions and atmospheric concentrations presents a unique problem that fundamentally

differs from the kind of environmental problem that the NAAQS system was intended to address and is capable of solving." *Id.*

Further, states that fail to attain a NAAQS for CO₂ would face the prospect of sanctions, including the loss of federal highway funds under section 179 of the Act, 42 U.S.C. 7509(b), despite the fact that attainment is beyond their control. Such an implausible and futile scenario demonstrates that Congress did not intend the CAA to authorize regulation of CO₂ to address global climate change. *See Food and Drug Admin. v. Brown and Williamson Tobacco Corp.*, 529 U.S. 120, 141 (2000)(rejecting statutory interpretation that would result in an implausible regulatory scheme).²

A. Petitioners' argument that the specific level of a NAAQS for CO₂ is not yet known is unavailing.

Petitioners' claim that "EPA's 'unworkability' argument" is not logical because the issue of "[w]hether the NAAQS system proves workable depends upon a variety of undetermined factors, including the level at which the NAAQS is set." Brief of Petitioners, at 34. Petitioners' assertion ignores the fact that, regardless of

² Section 179B of the Act provides that a state's SIP may be approved by EPA if the state "establishes to the satisfaction of EPA" that the state would attain and maintain the NAAQS "but for emissions emanating from outside of the United States." 42 U.S.C. 7509a. It would be problematic for a state to make that showing to EPA due to the complex interactions of numerous factors that affect foreign greenhouse emissions and their impact on air quality within a state. As EPA explained in its denial of the ICTA petition, "[w]hile atmospheric concentrations of CO₂ are fairly consistent globally, the potential for either adverse or beneficial effects in the U.S. from these concentrations depends on complicated interactions of many variables on the land, in the oceans, and in the atmosphere, occurring around the world and over long periods of time." 68 Fed. Reg. at 52,927. EPA emphasized that "[c]haracterization and assessment of such effects and the relation of such effects to atmospheric concentration of CO₂ in the U.S. would present scientific issues of unprecedented complexity in the NAAQS context." *Id.*

the specific level at which a NAAQS for CO₂ is set, it would be impossible for states to either attain it or remain in attainment given the global nature of greenhouse gas emissions and their homogenous concentrations throughout the world's atmosphere.

If EPA set a NAAQS for CO₂, an entire state (as well as the entire country) would be either in attainment or non-attainment depending on the level at which the standard was set. If the state were in attainment, it would be responsible for maintaining that attainment status, which would be impossible for the state to achieve given the rising worldwide CO₂ emissions that Petitioners identify. *See id.*, at 5-11 (citing various sources for the proposition that greenhouse gas emissions, including CO₂, will continue to increase and that global warming will continue into the future). If the state were in non-attainment, it would be responsible for lowering atmospheric levels to achieve attainment, something it would also be unable to do given the global nature of CO₂ emissions and concentrations. The specific level of a NAAQS for CO₂ does not affect the reality that states would lack the power to achieve or maintain any NAAQS for CO₂.

III. The broadly worded statutory authority on which Petitioners rely is insufficient, especially given the economic and political significance of regulating greenhouse gas emissions under the NAAQS system.

EPA's denial of the ICTA Petition is further supported by the fact that the regulation of greenhouse gas emissions under the NAAQS system raises extremely significant and far-reaching economic and political issues. Accordingly, EPA must be cautious about relying on broadly worded statutory language as the authority for any such regulation. *See Food and Drug Admin. v. Brown and Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)("[I]n extraordinary cases, . . . there may be reason to hesitate before concluding that Congress intended such an implicit delegation.").

CO₂ is emitted when fossil fuels are used to produce energy. 68 Fed. Reg. at 52,928. Thus the activities that result in the emission of CO₂ are an integral part of the country's economy, including the generation of electricity by industrial facilities and power plants, production of heat for use in residential and commercial buildings, and the operation of vehicles with internal combustion engines (including cars, trucks and buses). In the United States, 27 percent of CO₂ emissions result from industrial activities, residential and commercial buildings account for approximately 35 percent of the CO₂ emissions, and the nation's transportation system (including cars, trucks, buses and aircraft) is responsible for roughly one-third of the nation's CO₂ emissions. U.S. Department of State, *U.S.*

Climate Action Report, 2002 (2002), at 53, 54, 56; [JA 695-97]. Regulation of CO₂ emissions would have a substantial impact, either directly or indirectly, on nearly every facet of each state's economy.

Further, the regulation of greenhouse gas emissions is both an international and domestic political issue. Mandatory emission limitations to address global climate change involve foreign policy concerns that, as the EPA correctly noted, are to be addressed by the Executive Branch. 68 Fed. Reg. at 52,931. Given the pervasive impact on nearly every sector of the economy from greenhouse gas regulation, any delegation to EPA by Congress of such regulatory authority would have been made with much greater precision than the broad definitional language for "air pollutant" and "effects on welfare" relied upon by Petitioners, neither of which specifically references global climate change. Such unusually significant political and economic impacts demonstrate that Congress clearly did not delegate to EPA the authority to regulate greenhouse gas emissions for purposes of global climate change in the CAA. *See Brown & Williamson*, 529 U.S. at 160 ("[W]e are confident that Congress could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion.").

CONCLUSION


For the reasons stated above, the State Intervenors and the Amicus State of Indiana respectfully request that the Court deny the Petitions for Review in these consolidated cases.

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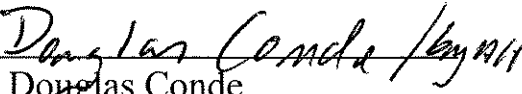
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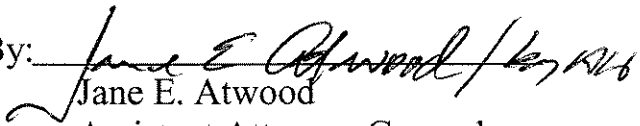
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ac/open/2003/carbon dioxide/brief-final

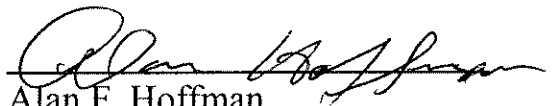
CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(B), I hereby certify that the foregoing brief contains 4,187 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), as counted by Microsoft Word software.

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STATUTORY APPENDIX

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Clean Air Act:

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Section 202, 42 U.S.C. § 7521(a)	E
40 C.F.R. 50.1(e)	F

Section 107, 42 U.S.C. § 7407(a)

Prior Provisions

A prior section 106 of Act July 14, 1955, was renumbered section 117 by Pub.L. 91-604 and is set out as section 7417 of this title.

§ 7407. Air quality control regions

[CAA § 107]

(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

Section 108, 42 U.S.C. § 7408

monitoring data performed in accordance with any applicable Federal reference methods for the relevant areas. Only data from the monitoring network designated in subsection (a) and other Federal reference method PM_{2.5} monitors shall be considered for such designations. Nothing in the previous sentence shall be construed as affecting the Governor's authority to designate an area initially as nonattainment, and the Administrator's authority to promulgate the designation of an area as nonattainment, under section 107(d)(1) of the Clean Air Act [subsec. (d)(1) of this section], based on its contribution to ambient air quality in a nearby nonattainment area.

"(2) For any area designated as nonattainment for the July 1997 PM_{2.5} national ambient air quality standard in accordance with the schedule set forth in this section, notwithstanding the time limit prescribed in paragraph (2) of section 169B(e) of the Clean Air Act [section 7492(e)(2) of this title], the Administrator shall require State implementation plan revisions referred to in such paragraph (2) to be submitted at the same time as State implementation plan revisions referred to in section 172 of the Clean Air Act [section 7502 of this title] implementing the revised national ambient air quality standard for fine particulate matter are required to be submitted. For any area designated as attainment or unclassifiable for such standard, the Administrator shall require the State implementation plan revisions referred to in such paragraph (2) to be submitted 1 year after the area has been so designated. The preceding provisions of this paragraph shall not preclude the implementation of the agreements and recommendations set forth in the Grand Canyon Visibility Transport Commission Report dated June 1996.

"(d) The Administrator shall promulgate the designations referred to in section 107(d)(1) of the Clean Air Act [subsec. (d)(1) of this section] for each area following promulgation of the July 1997 PM_{2.5} national ambient air quality standard by the earlier of 1 year after the initial designations required under subsection (c)(1) are required to be submitted or December 31, 2005.

"(e) The Administrator shall conduct a field study of the ability of the PM_{2.5} Federal Reference Method to differentiate those particles that are larger than 2.5 micrograms in diameter. This study shall be completed and provided to the Committee on Commerce of the House of Representatives and the Committee on Environment and Public Works of the United States Senate no later than 2 years from the date of enactment of this Act [June 9, 1998].

"Sec. 6103. Ozone designation requirements.

"(a) The Governors shall be required to submit the designations referred to in section 107(d)(1) of the Clean Air Act [subsec. (d)(1) of this section] within 2 years following the promulgation of the July 1997 ozone national ambient air quality standards.

"(b) The Administrator shall promulgate final designations no later than 1 year after the designations required under subsection (a) are required to be submitted.

"Sec. 6104. Additional provisions.

"Nothing in sections 6101 through 6103 [set out above in this note] shall be construed by the Administrator of Environmental Protection Agency or any court, State, or person to affect any pending litigation or to be a ratification of the ozone or PM_{2.5} standards."

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to Act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub.L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with Act July 14, 1955, as amended by Pub.L. 95-95 [this chapter], see section 406(b) of Pub.L. 95-95, set out as an Effective and Applicability Provisions of 1977 Acts note under section 7401 of this title.

§ 7408. Air quality criteria and control techniques

[CAA § 108]

(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 NO₂ 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 inter-agency 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 con-

centration particularly during periods of peak use;

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

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

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

(xi) programs to control extended idling of vehicles;

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

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

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

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

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

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

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

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

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

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

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

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

(g) Assessment of risks to ecosystems

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

(h) RACT/BACT/LAER clearinghouse

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

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

HISTORICAL AND STATUTORY NOTES

Codifications

Section was formerly classified to section 1857c-3 of this title.

Reference in subsec. (c) in the original to "enactment of the Clean Air Act Amendments of 1989" has been codified as "November 15, 1990" as manifesting Congressional intent in the date of the enactment of Pub.L. 101-549, Nov. 15, 1990, 104 Stat. 2399, popularly known as the Clean Air Act Amendments of 1990.

Effective and Applicability Provisions

1990 Acts

Amendment by Pub.L. 101-549 effective Nov. 15, 1990, except as otherwise provided, see section 711(b) of Pub.L. 101-549, set out as a note under section 7401 of this title.

1977 Acts

Amendment by Pub.L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub.L. 95-95, set out as a note under section 7401 of this title.

Savings Provisions

Suits, actions or proceedings commenced under this chapter as in effect prior to Nov. 15, 1990, not to abate by reason of the taking effect of amendments by Pub.L. 101-549, except as otherwise provided for, see section 711(a) of Pub.L. 101-549, set out as a note under section 7401 of this title.

Section 109, 42 U.S.C. § 7409

Prior Provisions

A prior section 108 of Act July 14, 1955, was renumbered section 115 by Pub.L. 91-604 and is set out as section 7415 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to Act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub.L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with Act July 14, 1955, as amended by Pub.L. 95-95 [this chapter], see section 406(b) of Pub.L. 95-95, set out as an Effective and Applicability Provisions of 1977 Acts note under section 7401 of this title.

§ 7409. National primary and secondary ambient air quality standards

[CAA § 109]

(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 sec-

tion 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 NO₂ 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 Ad-

ministrator 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.

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

HISTORICAL AND STATUTORY NOTES

Codifications

Section was formerly classified to section 1857c-4 of this title.

Effective and Applicability Provisions

1977 Acts

Amendment by Pub.L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub.L. 95-95, set out as a note under section 7401 of this title.

Prior Provisions

A prior section 109 of Act July 14, 1955, was renumbered section 116 by Pub.L. 91-604 and is set out as section 7416 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to Act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub.L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with Act July 14, 1955, as amended by Pub.L. 95-95 [this chapter], see section 406(b) of Pub.L. 95-95, set out as an Effective and Applicability Provisions of 1977 Acts note under section 7401 of this title.

Role of Secondary Standards

Pub.L. 101-549, Title VIII, § 817, Nov. 15, 1990, 104 Stat. 2697, provided that:

“(a) **Report.**—The Administrator shall request the National Academy of Sciences to prepare a report to the Congress on the role of national secondary ambient air quality standards in protecting welfare and the environment. The report shall:

“(1) include information on the effects on welfare and the environment which are caused by ambient concentrations of pollutants listed pursuant to section 108 [section 7408 of this title] and other pollutants which may be listed;

“(2) estimate welfare and environmental costs incurred as a result of such effects;

“(3) examine the role of secondary standards and the State implementation planning process in preventing such effects;

“(4) determine ambient concentrations of each such pollutant which would be adequate to protect welfare and the environment from such effects;

“(5) estimate the costs and other impacts of meeting secondary standards; and

“(6) consider other means consistent with the goals and objectives of the Clean Air Act [this chapter] which may be more effective than secondary standards in preventing or mitigating such effects.

“(b) **Submission to Congress; comments; authorization.**—(1) The report shall be transmitted to the Congress not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

“(2) At least 90 days before issuing a report the Administrator shall provide an opportunity for public comment on the proposed report. The Administrator shall include in the final report a summary of the comments received on the proposed report.

“(3) There are authorized to be appropriated such sums as are necessary to carry out this section.”

Termination of Advisory Committees

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law, see section 14 of Pub.L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in Appendix 2 to Title 5, Government Organization and Employees.

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

[CAA § 110]

(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,

Section 179B, 42 U.S.C. 7509a

under this part, the ratio of emission reductions to increased emissions shall be at least 2 to 1.

(c) Notice of failure to attain

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

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

(d) Consequences for failure to attain

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

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

(3) The attainment date applicable to the revision required under paragraph (1) shall be the same as provided in the provisions of section 7502(a)(2) of this title, except that in applying such provisions the phrase "from the date of the notice under section 7509(c)(2) of this title" shall be substituted for the phrase "from the date such area was designated nonattainment under section 7407(d) of this title" and for the phrase "from the date of designation as nonattainment".

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

HISTORICAL AND STATUTORY NOTES

References in Text

Title 23, referred to in subsec. (b)(1)(A), is Title 23, Highways.

Effective and Applicability Provisions

1990 Acts

Section to take effect Nov. 15, 1990, except as otherwise provided, see section 711(b) of Pub.L. 101-549, set out as a note under section 7401 of this title.

Savings Provisions

Suits, actions or proceedings commenced under this chapter as in effect prior to Nov. 15, 1990, not to abate by reason of the taking effect of amendments by Pub.L. 101-549, except as otherwise provided for, see section 711(a) of Pub.L. 101-549, set out as a note under section 7401 of this title.

§ 7509a. International border areas

[CAA § 179B]

(a) Implementation plans and revisions

Notwithstanding any other provision of law, an implementation plan or plan revision required under this chapter shall be approved by the Administrator if—

(1) such plan or revision meets all the requirements applicable to it under the¹ chapter other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, and

(2) the submitting State establishes to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, but for emissions emanating from outside of the United States.

(b) Attainment of ozone levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to an ozone nonattainment area in such State, such State would have attained the national ambient air quality standard for ozone by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 7511(a)(2) or (5) of this title or section 7511d of this title.

(c) Attainment of carbon monoxide levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator, with respect to a carbon monoxide nonattainment area in such State, that such State has attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 7512(b)(2) or (9)² of this title.

(d) Attainment of PM-10 levels

Section 202, 42 U.S.C. § 7521(a)

Savings Provisions

Suits, actions or proceedings commenced under this chapter as in effect prior to Nov. 15, 1990, not to abate by reason of the taking effect of amendments by Pub.L. 101-549, except as otherwise provided for, see section 711(a) of Pub.L. 101-549, set out as a note under section 7401 of this title.

*Subpart 6—Savings Provisions***§ 7515. General savings clause**

[CAA § 193]

Each regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this chapter, as in effect before November 15, 1990, shall remain in effect according to its terms, except to the extent otherwise provided under this chapter, inconsistent with any provision of this chapter, or revised by the Administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

(July 14, 1955, c. 360, Title I, § 193, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 108(l), 104 Stat. 2469.)

HISTORICAL AND STATUTORY NOTES**Effective and Applicability Provisions****1990 Acts**

Section to take effect Nov. 15, 1990, except as otherwise provided, see section 711(b) of Pub.L. 101-549, set out as a note under section 7401 of this title.

Savings Provisions

Suits, actions or proceedings commenced under this chapter as in effect prior to Nov. 15, 1990, not to abate by reason of the taking effect of amendments by Pub.L. 101-549, except as otherwise provided for, see section 711(a) of Pub.L. 101-549, set out as a note under section 7401 of this title.

SUBCHAPTER II—EMISSION STANDARDS FOR MOVING SOURCES**PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS****§ 7521. Emission standards for new motor vehicles or new motor vehicle engines**

[CAA § 202]

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b) of this section—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance

with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)(A) In general

(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

(B) Revised standards for heavy duty trucks

(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

(ii) Effective for the model year 1998 and thereafter, the regulations under paragraph (1) of this subsection applicable to emissions of oxides of nitrogen (NO_x) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (g/bh).

(C) Lead time and stability

Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

(D) Rebuilding practices

The Administrator shall study the practice of rebuilding heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare taking costs into account. Any regulation shall take effect after a period the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.

(E) Motorcycles

For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1) of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) of this section applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor

vehicle engine for purposes of complying with requirements prescribed under this subchapter if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to requirements prescribed under this subchapter without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term "fill pipe" shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) Onboard vapor recovery

Within 1 year after November 15, 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based ("onboard") systems for the control of vehicle refueling emissions, promulgate standards under this section requiring that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall be equipped with such systems. The standards required under this paragraph shall apply to a percentage of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated. The percentage shall be as specified in the following table:

IMPLEMENTATION SCHEDULE FOR ONBOARD VAPOR RECOVERY REQUIREMENTS

Model year commencing after standards promulgated	Percentage*
Fourth	40
Fifth	80
After Fifth	100

*Percentages in the table refer to a percentage of the manufacturer's sales volume.

The standards shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent. The requirements of section 7511a(b)(3) of this title (relating to stage II gasoline vapor recovery) for areas classified under section 7511 of this title as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such section 7511a(b)(3) of this title for areas classified under section 7511 of this title as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives

(1)(A) The regulations under subsection (a) of this section applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such

emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5), regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during the model year 1981 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that—

(i) the ability of such manufacturer to meet emission standards in the 1975 and subsequent model years was, and is, primarily dependent upon technology developed by other manufacturers and purchased from such manufacturers; and

(ii) such manufacturer lacks the financial resources and technological ability to develop such technology.

SUBCHAPTER C—AIR PROGRAMS

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

- Sec.
- 50.1 Definitions.
- 50.2 Scope.
- 50.3 Reference conditions.
- 50.4 National primary ambient air quality standards for sulfur oxides (sulfur dioxide).
- 50.5 National secondary ambient air quality standard for sulfur oxides (sulfur dioxide).
- 50.6 National primary and secondary ambient air quality standards for PM₁₀.
- 50.7 National primary and secondary ambient air quality standards for particulate matter.
- 50.8 National primary ambient air quality standards for carbon monoxide.
- 50.9 National 1-hour primary and secondary ambient air quality standards for ozone.
- 50.10 National 8-hour primary and secondary ambient air quality standards for ozone.
- 50.11 National primary and secondary ambient air quality standards for nitrogen dioxide.
- 50.12 National primary and secondary ambient air quality standards for lead.
- APPENDIX A TO PART 50—REFERENCE METHOD FOR THE DETERMINATION OF SULFUR DIOXIDE IN THE ATMOSPHERE (PARAROSANILINE METHOD)
- APPENDIX B TO PART 50—REFERENCE METHOD FOR THE DETERMINATION OF SUSPENDED PARTICULATE MATTER IN THE ATMOSPHERE (HIGH-VOLUME METHOD)
- APPENDIX C TO PART 50—MEASUREMENT PRINCIPLE AND CALIBRATION PROCEDURE FOR THE MEASUREMENT OF CARBON MONOXIDE IN THE ATMOSPHERE (NON-DISPERSIVE INFRARED PHOTOMETRY)
- APPENDIX D TO PART 50—MEASUREMENT PRINCIPLE AND CALIBRATION PROCEDURE FOR THE MEASUREMENT OF OZONE IN THE ATMOSPHERE
- APPENDIX E TO PART 50 [RESERVED]
- APPENDIX F TO PART 50—MEASUREMENT PRINCIPLE AND CALIBRATION PROCEDURE FOR THE MEASUREMENT OF NITROGEN DIOXIDE IN THE ATMOSPHERE (GAS PHASE CHEMILUMINESCENCE)
- APPENDIX G TO PART 50—REFERENCE METHOD FOR THE DETERMINATION OF LEAD IN SUSPENDED PARTICULATE MATTER COLLECTED FROM AMBIENT AIR
- APPENDIX H TO PART 50—INTERPRETATION OF THE 1-HOUR PRIMARY AND SECONDARY NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE

APPENDIX I TO PART 50—INTERPRETATION OF THE 8-HOUR PRIMARY AND SECONDARY NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE

APPENDIX J TO PART 50—REFERENCE METHOD FOR THE DETERMINATION OF PARTICULATE MATTER AS PM₁₀ IN THE ATMOSPHERE

APPENDIX K TO PART 50—INTERPRETATION OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER

APPENDIX L TO PART 50—REFERENCE METHOD FOR THE DETERMINATION OF FINE PARTICULATE MATTER AS PM_{2.5} IN THE ATMOSPHERE

APPENDIX M TO PART 50—REFERENCE METHOD FOR THE DETERMINATION OF PARTICULATE MATTER AS PM₁₀ IN THE ATMOSPHERE

APPENDIX N TO PART 50—INTERPRETATION OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER

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

SOURCE: 36 FR 22384, Nov. 25, 1971, unless otherwise noted.

§ 50.1 Definitions.

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

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

(c) *Agency* means the Environmental Protection Agency.

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

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

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

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

been cancelled in accordance with § 53.11 or § 53.16 of this chapter.

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

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

[36 FR 22384, Nov. 25, 1971, as amended at 41 FR 11253, Mar. 17, 1976; 48 FR 2529, Jan. 20, 1983; 63 FR 7274, Feb. 12, 1998]

§ 50.2 Scope.

(a) National primary and secondary ambient air quality standards under section 109 of the Act are set forth in this part.

(b) National primary ambient air quality standards define levels of air quality which the Administrator judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator deems necessary to protect the public health and welfare.

(c) The promulgation of national primary and secondary ambient air quality standards shall not be considered in any manner to allow significant deterioration of existing air quality in any portion of any State or Indian country.

(d) The proposal, promulgation, or revision of national primary and secondary ambient air quality standards shall not prohibit any State or Indian country from establishing ambient air quality standards for that State or area under a tribal CAA program or any portion thereof which are more stringent than the national standards.

[36 FR 22384, Nov. 25, 1971, as amended at 63 FR 7274, Feb. 12, 1998]

§ 50.3 Reference conditions.

All measurements of air quality that are expressed as mass per unit volume (e.g., micrograms per cubic meter) other than for the particulate matter (PM₁₀ and PM_{2.5}) standards contained in § 50.7 shall be corrected to a reference temperature of 25 °C and a reference pressure of 760 millimeters of mercury (1,013.2 millibars). Measurements of PM₁₀ and PM_{2.5} for purposes of comparison to the standards contained in § 50.7 shall be reported based on actual ambient air volume measured at the actual ambient temperature and pressure at the monitoring site during the measurement period.

[62 FR 38711, July 18, 1997]

§ 50.4 National primary ambient air quality standards for sulfur oxides (sulfur dioxide).

(a) The level of the annual standard is 0.030 parts per million (ppm), not to be exceeded in a calendar year. The annual arithmetic mean shall be rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm shall be rounded up).

(b) The level of the 24-hour standard is 0.14 parts per million (ppm), not to be exceeded more than once per calendar year. The 24-hour averages shall be determined from successive non-overlapping 24-hour blocks starting at midnight each calendar day and shall be rounded to two decimal places (fractional parts equal to or greater than 0.005 ppm shall be rounded up).

(c) Sulfur oxides shall be measured in the ambient air as sulfur dioxide by the reference method described in appendix A to this part or by an equivalent method designated in accordance with part 53 of this chapter.

(d) To demonstrate attainment, the annual arithmetic mean and the second-highest 24-hour averages must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 24-hour block average shall be considered valid if at least 75 percent of the hourly averages for the 24-hour period are available. In the event that only 18, 19, 20, 21, 22, or 23 hourly averages are available, the 24-hour block average shall be computed as the sum of the available hourly

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF MASSACHUSETTS, *et al.*,

Petitioners,

V.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

NO. 03-1361

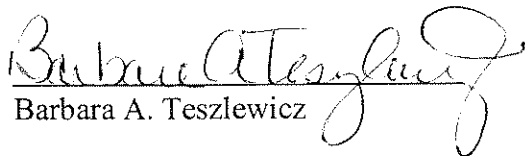
(Consolidated with

Nos. 03-1362, 03-1363 and 03-1364)

PROOF OF SERVICE

I hereby certify that on January 21, 2005, I served a copy of the FINAL BRIEF FOR THE INTERVENOR STATES OF MICHIGAN, TEXAS, IDAHO, NORTH DAKOTA, UTAH, SOUTH DAKOTA, ALASKA, KANSAS, NEBRASKA, AND OHIO, AND THE AMICUS STATE OF INDIANA IN SUPPORT OF RESPONDENT UNITED STATES ENVIRONMENTAL PROTECTION AGENCY on the individuals listed on the attached Service List, via first class mail.

I declare that the statements above are true to the best of my information, knowledge and belief.


Barbara A. Teszlewicz

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