No. 24-7270

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

COMMITTEE FOR A BETTER ARVIN, *et al.*,

Petitioners,

v.

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

Respondents,

and

CALIFORNIA AIR RESOURCES BOARD, *et al.*,

Respondents-Intervenors.

Petition for Review of Final Action of the
U.S. Environmental Protection Agency

PETITIONERS' OPENING BRIEF

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GLOSSARY

BACM	best available control measures; required in certain areas by CAA § 189(b)(1)(B), 42 U.S.C. § 7513a(b)(1)(B)
Act or CAA	Clean Air Act, 42 U.S.C. §§ 7401–7671q
CARB	California Air Resources Board
District	San Joaquin Valley Unified Air Pollution Control District
EPA	United States Environmental Protection Agency
Five Percent Plan	required by CAA § 189(d), 42 U.S.C. § 7513a(d), for a serious nonattainment area's failure to attain a NAAQS
MSM	most stringent measures; required by CAA § 188(e), 42 U.S.C. § 7513(e), for a serious particulate matter nonattainment area to extend its attainment date
NAAQS or standard	national ambient air quality standard
NOx	nitrogen oxides; precursors to the atmospheric formation of fine particulate matter
PM2.5	particulate matter with a diameter of 2.5 micrometers and smaller (also referred to as "fine particulate matter")
RACM	reasonably available control measures; required in certain areas by CAA §§ 172(c)(1), 189(a)(1)(C), 42 U.S.C. §§ 7502(c)(1), 7513a(a)(1)(C)
RFP	reasonable further progress; required by CAA § 172(c)(2), 42 U.S.C. § 7502(c)(2), and defined by CAA § 171(1), 42 U.S.C § 7501(1)
SIP	State Implementation Plan
Valley	San Joaquin Valley

INTRODUCTION

California's San Joaquin Valley "has long been 'an area with some of the worst air quality in the United States,' and it has repeatedly failed to meet air quality standards." *Ass'n of Irritated Residents v. EPA*, 10 F.4th 937, 944 (9th Cir. 2021) ("*AIR II*") (citation omitted). Petitioners Committee for a Better Arvin, *et al*. ("Air Advocates") challenge the U.S. Environmental Protection Agency's ("EPA") approval of pollution controls known as "contingency measures," which the Clean Air Act ("Act") requires for areas like the Valley with persistently high and unhealthy levels of air pollution, including harmful fine particulate matter ("PM2.5"). Air Advocates ask the Court to remand EPA's approval because the contingency measures do not comply with the Act, and EPA's approval was otherwise arbitrary and capricious.

Among the Act's comprehensive requirements for achieving health-based national ambient air quality standards ("NAAQS" or "standards"), Congress ordered states to develop contingency measures to serve as a backup plan for when their primary strategies fail to attain, or make reasonable further progress toward, the NAAQS. For more than thirty years, EPA has interpreted section 172(c)(9) of the Act, 42 U.S.C. § 7502(c)(9), to require contingency measures that achieve meaningful emissions reductions. In its recent approval of PM2.5 contingency measures for the Valley, however, EPA abandoned its long-standing interpretation—ignoring the Act's statutory language, structure, and legislative history to require only trifling emissions reductions. EPA's approval violates the Clean Air Act, is arbitrary and capricious, and deprives Valley residents of the statutory health protections Congress required.

STATEMENT OF JURISDICTION

This petition for review challenges a final EPA action applicable to California's San Joaquin Valley, taken pursuant to the Clean Air Act. This Court has jurisdiction pursuant to section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1), which provides that a petition for review of a final EPA action "which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit." Such a petition for review must be filed within sixty days from the date EPA published notice of its final action in the Federal Register. *Id*. On October 4, 2024, EPA published notice of the final rule challenged in this petition for review. 1-ER-2, 89 Fed. Reg. 80749 (Oct. 4, 2024). On December 2, 2024, Air Advocates timely filed their petition for review. Docket Entry No. 1.

STATEMENT OF ISSUES PRESENTED

1. Whether EPA's approval of contingency measures for the San Joaquin Valley violates section 172(c)(9) of the Clean Air Act, 42 U.S.C. § 7502(c)(9), when EPA adopted a new interpretation of the Act that does not require contingency measures to provide meaningful emissions reductions.

2. Whether EPA's approval of contingency measures for the Valley violates section 172(c)(9) of the Clean Air Act, 42 U.S.C. § 7502(c)(9), or is otherwise arbitrary and capricious, when EPA adopted a subjective, non-statutory exemption based on undefined feasibility considerations and approved contingency measures that only achieve *de minimis* emissions reductions.

3. Whether EPA's approval of contingency measures for the Valley violates section 172(c)(9) of the Clean Air Act, 42 U.S.C. § 7502(c)(9), or is otherwise arbitrary and capricious, when EPA has conceded that the measures, adopted to provide backup controls for three separate NAAQS, will be rendered deficient upon a single finding by EPA triggering the measures.

ADDENDUM

Pursuant to Circuit Rule 28-2.7, all relevant statutes, regulations, and legislative history are included in the addendum that accompanies this brief.

STATEMENT OF THE CASE

I. The air quality crisis in the San Joaquin Valley.

The San Joaquin Valley consists of the eight counties located in the southern half of the Central Valley in California. 2-ER-114, 116, 88 Fed. Reg. 87988, 87990 (Dec. 20, 2023). Despite its more rural character, the Valley suffers from very poor air quality, with residents breathing "an air that kills" owing to "dangerous levels of particulate matter" and other pollution. *Nat'l Ass'n of Home Builders v. San Joaquin Valley Unified Air Pollution Control Dist.*, 627 F.3d 730, 731 (9th Cir. 2010).

Inhalable airborne particles, the primary ingredient of smoke, haze, and airborne dust, are harmful to human health. Fine particulate matter pollution, also called "PM2.5," consists of the smallest particles (2.5 micrometers in diameter and smaller) and is produced chiefly by combustion processes and by atmospheric reactions of pollutants such as nitrogen oxides ("NOx"), sulfur oxides ("SOx"), volatile organic compounds, and ammonia. 2-ER-115–116, 88 Fed. Reg. at 87989–90. Sources of PM2.5 "include both stationary (e.g., fuel combustion for electricity production and other purposes, industrial processes, agricultural activities) and mobile (e.g., diesel- and gasoline-powered highway vehicles and other engine-driven sources) sources." 89 Fed. Reg. 16202, 16214/1 (Mar. 6, 2024).[1]

Fine particulate matter can penetrate deep into a person's lungs and may even enter a person's bloodstream. 2-ER-80. According to EPA, "numerous health studies demonstrat[e]" that exposure to PM2.5 is associated with "serious health effects," including "aggravation of respiratory and cardiovascular disease (as

[1] Air Advocates may cite to the 1st, 2nd, or 3rd column on a page as printed in the *Federal Register*. For example, the citation 89 Fed. Reg. 16202, 16214/1 cites to the 1st column from the left on page 16214.

indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function," and even "premature mortality." 2-ER-116, 88 Fed. Reg. at 87990/1. "[O]lder adults, people with heart and lung disease, and children" are "particularly sensitive to PM2.5 exposure." *Id*.

According to the American Lung Association, counties in the San Joaquin Valley rank among the worst in the United States for PM2.5. For short-term exposure to PM2.5, the Valley counties of Kern, Fresno, Kings, and Tulare rank as the first, second, fourth, and eighth most polluted counties, respectively. 2-ER-78. With respect to long-term PM2.5 exposures, Kern, Tulare, Kings, Fresno, and Stanislaus rank as the first, second, fifth, sixth, and sixteenth most polluted counties, respectively. *Id*. While persistently unhealthy levels of PM2.5 are harmful to everyone, a disproportionately high number of "susceptible populations in underserved communities" are affected in the Valley, owing to the fact that the Valley's minority, low-income, and linguistically-isolated populations and population with less than a high school education are all higher than the national average. 2-ER-191, 234, 88 Fed. Reg. 45276, 45319 (July 14, 2023); 2-ER-302–03.

EPA has also identified a number of adverse welfare impacts associated with elevated PM2.5 levels, including adverse impacts on visibility. *See* 89 Fed. Reg. at 16205, 16206 n.6.

II. The Clean Air Act's strategy for addressing PM2.5 pollution.

Congress adopted the Clean Air Act as "a drastic remedy to what was perceived as a serious and otherwise uncheckable problem of air pollution." *Union Elec. Co. v. EPA*, 427 U.S. 246, 256 (1976). Congress did so to protect and enhance the nation's air quality in order to promote public health and welfare. 42 U.S.C. § 7401(b). To achieve this goal, the Clean Air Act "established a uniquely important system of cooperative federalism in the quest for clean air." *Comm. for a Better Arvin v. EPA*, 786 F.3d 1169, 1173 (9th Cir. 2015).

The Act directs EPA to establish national ambient air quality standards (or NAAQS) that all areas of the country must achieve. 42 U.S.C. § 7409(a). EPA must set each standard at a level sufficient "to protect the public health" with "an adequate margin of safety." *Id.* § 7409(b)(1).

With respect to PM2.5 pollution, EPA has set several health-based NAAQS relevant to this case:

- In 1997, EPA established its original PM2.5 standards: an annual average ambient concentration of 15 $\mu g/m^3$ and a 24-hour concentration of 65 $\mu g/m^3$, to protect people from long-term and short-term PM2.5 pollution exposure, respectively. 3-ER-464, 62 Fed. Reg. 38652, 38652 (July 18, 1997) ("1997 Annual PM2.5 Standard" and "1997 24-Hour PM2.5 Standard").[2]

- In 2006, to better protect the public from short-term exposures, EPA increased the stringency of the 24-hour standard by lowering the allowable ambient concentration from 65 $\mu g/m^3$ to 35 $\mu g/m^3$. 3-ER-458–59, 71 Fed. Reg. 61144, 61145 (Oct. 17, 2006) ("2006 24-Hour PM2.5 Standard").
- In 2012, EPA promulgated a more stringent annual average standard of 12 $\mu g/m^3$ because of significant evidence of harm from exposures below the 1997 standard. 3-ER-454, 78 Fed. Reg. 3086, 3086 (Jan. 15, 2013) ("2012 Annual PM2.5 Standard").[3]

After a NAAQS like each of the several PM2.5 standards is promulgated or revised, EPA must designate whether each area of the country meets or violates the new standard. 42 U.S.C. § 7407(d)(1). For those areas that fail to meet the NAAQS ("nonattainment areas"), the Act requires states to develop plans and strategies—collectively called the State Implementation Plan ("SIP")—to reduce air pollution and attain the health-based national standards. *Id.* § 7410(a)(1); *see also Ass'n of*

[2] In 2020, EPA made a finding that the Valley attained the 1997 24-Hour PM2.5 Standard, *see* 2-ER-304–05, 87 Fed. Reg. 4503, 4503–04 (Jan. 28, 2022), so this case only addresses the 1997 Annual PM2.5 Standard.

[3] In 2024, EPA further increased the stringency of the annual standard, lowering it to 9 $\mu g/m^3$ when it found significant evidence of harm from PM2.5 exposures below the 2012 standard. *See* 89 Fed. Reg. at 16203–04.

Irritated Residents v. EPA, 686 F.3d 668, 671 (9th Cir. 2012) ("*AIR I*") ("[S]tates have primary responsibility . . . , and they must detail their efforts in a [SIP] for each region within that state."). A SIP must contain enforceable emissions limitations necessary to attain the standards and meet applicable requirements of the Act. 42 U.S.C. §§ 7410(a)(1)–(2), 7502(c)(6).

Congress directed EPA to review state plans and strategies to ensure compliance. *Id.* § 7410(k). Upon EPA approval, a state's submission becomes federal law and does not change unless and until EPA approves a change. *Safe Air for Everyone v. EPA*, 488 F.3d 1088, 1096 (9th Cir. 2007).

The Act provides for the classification of PM2.5 nonattainment areas as either "moderate" or "serious" and assigns deadlines that provide areas more time to attain the standards in exchange for adopting more stringent control measures in their SIPs. *See* 42 U.S.C. §§ 7513(c), 7513a(a)–(b). For example, moderate nonattainment areas are only required to adopt "reasonably available control measures" (RACM), but they must attain the NAAQS as expeditiously as practicable but no later than six years after designation. *Id.* § 7513(c)(1); 40 C.F.R. § 51.1004(a)(1)(i). In contrast, serious nonattainment areas are afforded no more than ten years to attain the standard, but they must adopt "best available control measures" (BACM) and are still obligated to attain the standard as expeditiously as practicable. 42 U.S.C. § 7513(c)(2); 40 C.F.R. § 51.1004(a)(2)(i).

Pursuant to section 188(e) of the Act, 42 U.S.C. § 7513(e), a state may request a further extension of the ten-year attainment deadline for a serious area—up to five years—but such an area must adopt "the most stringent measures" (MSM) and demonstrate attainment by the most expeditious alternative date practicable. *Accord* 40 C.F.R. §§ 51.1005(b), 51.1010(b). The Act defines MSM as "the most stringent measures that are included in the [SIP] of any State or are achieved in practice in any State, and can feasibly be implemented in the area." 42 U.S.C. § 7513(e).

If a serious nonattainment area fails to attain the standard by the attainment deadline (or extended deadline), section 189(d) of the Act, 42 U.S.C. § 7513a(d), requires the area to add—on top of all other existing requirements—further control measures sufficient to achieve at least a five percent reduction in PM2.5 pollution from the most recent inventory of emission sources (i.e., a "Five Percent Plan"). *Accord* 40 C.F.R. § 51.1010(c).

Whether classified as moderate or serious, all nonattainment areas share one bottom-line requirement: their SIPs must "require reasonable further progress" (sometimes shortened to "RFP") such that the area will reduce emissions and make steady progress toward meeting the NAAQS. 42 U.S.C. § 7502(c)(2); *see also id.* § 7513a(c)(1) (reiterating RFP requirement for particulate matter nonattainment areas); 40 C.F.R. § 51.1012(a) (same). The Act defines "reasonable further progress" as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." 42 U.S.C. § 7501(1); *accord* 40 C.F.R. § 51.1000.

III. The Clean Air Act's contingency measure requirement.

Despite the Act's detailed requirements for nonattainment SIPs, "Congress recognized that a State's implementation plan might not succeed." *AIR II*, 10 F.4th at 942. The Act therefore mandates that a nonattainment SIP include "contingency measures" in case the primary strategy fails. 42 U.S.C. § 7502(c)(9). More specifically, section 172(c)(9) of the Act, states that an attainment plan "shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part." *Id*. As EPA has explained, "[t]he purpose of contingency measures is to ensure that additional measures beyond or in addition to the required 'core' control measures (i.e., RACM for moderate areas and BACM for serious areas) immediately take effect when the area fails . . . to attain the [PM2.5] NAAQS in order to provide interim public health and welfare protection" as the state prepares a new SIP submission to rectify the problem. 3-ER-468, 472, 59 Fed. Reg. 41998, 42015/1 (Aug. 16, 1994).

Congress adopted the contingency measure requirement as part of its 1990 amendments to the Act, and EPA first provided its views on section 172(c)(9), 42 U.S.C. § 7502(c)(9), in an implementing rule issued in 1992. *See* Clean Air Act Amendments, Pub. L. No. 101-549, 104 Stat. 2399, 2414–15 (1990); 3-ER-476, 57 Fed. Reg. 13498, 13498 (Apr. 16, 1992). In that rule, EPA stated that, for a PM2.5 nonattainment area, "contingency emissions reductions should be approximately equal to the emissions reductions necessary to demonstrate [reasonable further progress] for one year." 3-ER-477–78, 57 Fed. Reg. at 13543–44; *see also* 3-ER-472, 59 Fed. Reg. at 42015 (requiring "emission reductions equivalent to 1 year's average increment of [reasonable further progress]").

More recently, in 2016, EPA reiterated its interpretation of section 172(c)(9), 42 U.S.C. § 7502(c)(9), in a rule summarizing the statutory SIP requirements that apply to designated PM2.5 nonattainment areas. In that rule, known as the 2016 PM2.5 SIP Requirements Rule, EPA maintained its view that "the emissions reductions associated with contingency measures . . . should be approximately equivalent to 1 year's worth of emissions reductions necessary to achieve [reasonable further progress] for the area . . . ." 3-ER-427, 435, 81 Fed. Reg. 58010, 58093/2 (Aug. 24, 2016).

IV. Repeated failures to attain the PM2.5 NAAQS in the Valley.

Air quality in the San Joaquin Valley has repeatedly failed to meet the PM2.5 NAAQS, and poor air quality that violates the health-based standards persists.

A. 1997 Annual PM2.5 Standard.

EPA designated the San Joaquin Valley as a serious nonattainment area for the 1997 Annual PM2.5 Standard and initially set December 31, 2015, as the attainment deadline. 3-ER-445, 447, 80 Fed. Reg. 18528, 18530/2 (Apr. 7, 2015). In 2016, based on its review of air quality monitoring data, EPA found that the Valley failed to improve air quality sufficiently to attain the standard. 3-ER-423, 81 Fed. Reg. 84481, 84481 (Nov. 23, 2016).

Having failed to meet the attainment deadline, in 2018, California adopted and submitted for EPA approval a revised plan to meet the 1997 Annual PM2.5 Standard. Submitted pursuant to section 189(d) of the Act, 42 U.S.C. § 7513a(d), the plan purported to reduce emissions five percent annually (i.e., a "Five Percent Plan") and projected attainment by December 31, 2020. 3-ER-312–13, 86 Fed. Reg. 67329, 67329–30 (Nov. 26, 2021). EPA did not make a decision on the plan until November 2021, when EPA disapproved it because air monitoring data indicated that the Valley failed to attain the standard by the new attainment deadline, December 31, 2020. *Id.* at 67330 & n.4, 67341.

Contemporaneous with EPA's disapproval of California's original Five Percent Plan, California submitted a revised Five Percent Plan in November 2021 and claimed that the Valley would attain the 1997 Annual PM2.5 Standard by December 31, 2023. 2-ER-193–194, 226, 88 Fed. Reg. at 45278–79, 45311. EPA approved the plan and set December 31, 2023, as the attainment date. 2-ER-139, 88 Fed. Reg. 86581, 86581 (Dec. 14, 2023).

In May 2024, California requested a one-year extension of the December 31, 2023 attainment date. 89 Fed. Reg. 91263, 91263 (Nov. 19, 2024). Effective December 19, 2024, EPA approved the request over the objection of community groups and set December 31, 2024, as the applicable attainment deadline. *Id.* at 91268/2.[4]

As of the date of filing this brief, EPA has not yet made a finding whether the San Joaquin Valley has attained the 1997 Annual PM2.5 Standard. The Act requires EPA to make a finding "as expeditiously as practicable but not later than 6 months after" the attainment date (i.e., June 30, 2025). 42 U.S.C. § 7509(c).

[4] Petitioners Medical Advocates for Healthy Air and Sierra Club have challenged EPA's final rule granting the one-year extension in *Little Manila Rising v. EPA*, No. 24-6990 (9th Cir. Nov. 19, 2024). The petition for review argues that the PM2.5 SIP Requirements Rule, 40 C.F.R. § 51.1005(c), does not authorize any extension of the applicable attainment date for a serious area subject to section 189(d) of the Act, 42 U.S.C. § 7513a(d).

B. 2006 24-Hour PM2.5 Standard.

In 2016, EPA determined that the San Joaquin Valley could not practicably attain the 2006 24-hour PM2.5 Standard by the moderate area attainment date of December 31, 2015, and reclassified the Valley as a serious nonattainment area. 3-ER-436, 81 Fed. Reg. 2993, 2993 (Jan. 20, 2016). At the time, EPA directed California to submit a plan to achieve the standard "as expeditiously as practicable and no later than December 31, 2019." *Id*.

In 2020, California requested—and EPA approved—a five-year extension of the attainment date for the 2006 24-Hour PM2.5 Standard, as authorized by section 188(e) of the Act, 42 U.S.C. § 7513(e). 3-ER-358, 371, 85 Fed. Reg. 44192, 44205 (July 22, 2020). EPA's approval established December 31, 2024, as the new applicable attainment date. *Id*.

As of the date of filing this brief, EPA has not yet made a finding whether the San Joaquin Valley has attained the 2006 24-Hour PM2.5 Standard. EPA must determine by June 30, 2025, whether the Valley attained the standard. *See* 42 U.S.C. § 7509(c).

C. 2012 Annual PM2.5 Standard.

In 2021, EPA found that the Valley could not practicably attain the 2012 Annual PM2.5 Standard by the moderate area attainment date of December 31, 2021, reclassified the Valley as a serious area, and set December 31, 2025, as the applicable attainment date. 3-ER-327, 331, 86 Fed. Reg. 67343, 67347 (Nov. 26, 2021).

California subsequently submitted a serious area attainment plan, but EPA proposed to disapprove that plan for several reasons, including California's failure to demonstrate that the plan would attain the 2012 Annual PM2.5 Standard by December 31, 2025. 87 Fed. Reg. 60494, 60530 (Oct. 5, 2022). Rather than face EPA disapproval, California withdrew the Valley's serious area plan. 2-ER-300–01.

On August 22, 2024, the California Air Resources Board ("CARB") submitted a request to extend the attainment date by the maximum five-year period to December 31, 2030, as allowed by section 188(e) of the Act, 42 U.S.C. § 7513(e). *See* Letter from Steven Cliff, Executive Officer, CARB, to Martha Guzman, Region Administrator, EPA (Aug. 22, 2024); CARB, Resolution 24-10, at 3–4 (2024).[5] To date, EPA has neither approved a plan to attain the standard by

[5] Air Advocates request the Court take judicial notice of CARB Resolution 24-10 and the letter from Steven Cliff to Martha Guzman, dated August 22, 2024, which submitted the SIP for the 2012 Annual PM2.5 Standard to EPA. The Court may take judicial notice of these documents as either generally known within the territorial jurisdiction of this Court or capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned, even though such facts were not part of the administrative record. *See Singh v. Ashcroft*, 393 F.3d 903, 905–07 (9th Cir. 2004). A court "may take judicial notice of records and reports of administrative bodies." *Interstate Nat. Gas Co. v. S. Cal. Gas Co.*, 209 F.2d 380, 385 (9th Cir. 1953); *see also Or. Nat. Desert Ass'n v. Bureau of Land*

December 31, 2025, nor made a decision on California's section 188(e) extension request.

V. PM2.5 contingency measures in the San Joaquin Valley.

A. Inadequate proposals and unlawful approvals.

In developing PM2.5 nonattainment plans for the San Joaquin Valley, California has repeatedly offered up contingency measures that EPA disapproved, owing to California's failure to adopt compliant measures. For example, on three occasions, EPA disapproved contingency measures the state proposed to meet the 1997 Annual PM2.5 Standard. 76 Fed. Reg. 69896, 69897 (Nov. 9, 2011) (disapproving measures "for failing to provide sufficient emissions reductions"); 80 Fed. Reg. 49190, 49191 (Aug. 17, 2015) (proposing disapproval for reliance on non-SIP measures to provide contingency reductions); 81 Fed. Reg. 29498, 29498–99 (May 12, 2016) (finalizing disapproval); 3-ER-335, 352, 86 Fed. Reg. 38652, 38669 (July 22, 2021) (proposing disapproval for "several deficiencies"); 3-ER-324, 86 Fed. Reg. at 67341 (finalizing disapproval).

Separately, this Court has twice faulted EPA for unlawful approvals of contingency measures in violation of Clean Air Act section 172(c)(9), 42 U.S.C.

Mgmt., 625 F.3d 1092, 1112 n.14 (9th Cir. 2008) (taking judicial notice of an agency handbook). The resolution and letter are available on CARB's website at https://ww2.arb.ca.gov/resources/documents/2024-san-joaquin-valley-pm2-5-plan?keywords=2025.

§ 7502(c)(9). Though the two cases addressed attainment plans for PM10 (coarse particulate matter less than ten micrometers in diameter) and ozone, respectively, they have been consequential for the development of the PM2.5 contingency measures challenged here.

In 2016, in *Bahr v. EPA*, the Court ruled that EPA violated the Act when it approved "[c]ontrol measures that have already been implemented" as contingency measures. 836 F.3d 1218, 1235–37 (9th Cir. 2016). Declining to defer to EPA's statutory interpretation, the Court ruled that Clean Air Act section 172(c)(9), 42 U.S.C. § 7502(c)(9), plainly requires "control measures that will be implemented in the future," once "triggered by the state's failure 'to make reasonable further progress' or to attain the NAAQS." *Id.* at 1235.

Following *Bahr*, in *AIR II*, this Court rejected EPA's approval of ozone contingency measures for the San Joaquin Valley that sought to "combine emissions reductions achieved through contingency measures with . . . 'additional emission reductions projected to occur that a state has not relied upon . . . to meet other nonattainment requirements.'" 10 F.4th at 946 (quoting 84 Fed. Reg. 11198, 11206 (Mar. 25, 2019)). The Court called out EPA's approval as "a transparent effort to circumvent *Bahr*." *Id*. Further, the Court ruled that EPA's attempt to rely on "emissions reductions from existing measures to make up for what everyone agrees otherwise would be an inadequate contingency measure" was unlawful because EPA "severed the relationship between the requirement of contingency measures and the benchmark of reasonable further progress . . . without an adequate explanation." *Id.*

After the *Bahr* and *AIR II* decisions, EPA disapproved contingency measures submitted by California for the 2006 24-Hour and 2012 Annual PM2.5 Standards in the Valley because, among other reasons, the proffered measures improperly relied on reductions from already implemented measures. 86 Fed. Reg. 49100, 49125, 49134 (Sept. 1, 2021); 3-ER-329–30, 86 Fed Reg. at 67345–46.

B. EPA moves to weaken contingency measure requirements.

EPA convened an internal Contingency Measure Task Force in response to the *Bahr* and *AIR II* decisions and began a collaboration with California regulators to change EPA's interpretation of section 172(c)(9), 42 U.S.C. § 7502(c)(9). 2-ER-84–96; 2-ER-310. In July 2022, EPA and California regulators reached agreement that EPA would revise its long-standing interpretation that required contingency measures to accomplish emissions reductions equivalent to one year's worth of reasonable further progress:

> In the longer-term, EPA will commit to revising prior national guidance on meeting contingency measure requirements. This effort would include: (1) revisiting the general bases for calculating the amount of [reasonable further progress] that contingency measures should account for, (2) acknowledging feasibility constraints where they are demonstrated to exist, and (3) clarifying the variety of measures that can fulfill the contingency measure requirements.

2-ER-100.

In January 2023, EPA staff agreed to help staff of the San Joaquin Valley Unified Air Pollution Control District ("District") calculate the amount of emissions reductions that EPA's new, not-yet-public interpretation of section 172(c)(9), 42 U.S.C. § 7502(c)(9), would require for the PM2.5 contingency measures the District and state authorities were required to develop. 2-ER-102.

In March 2023, EPA published for public comment a document entitled, *Draft Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter* ("Draft Revised Contingency Measure Guidance"). 2-ER-255, 88 Fed. Reg. 17571 (Mar. 23, 2023) (notice); 2-ER-257 (draft guidance). The Draft Revised Contingency Measure Guidance expressly states that it "does not establish legally binding requirements" and "[o]nly final EPA actions taken to approve or disapprove [SIP] submissions that implement any of the recommendations in this guidance would be final actions" subject to judicial review. 2-ER-259 n.1.[6]

[6] EPA did not finalize the Draft Contingency Measure Guidance prior to finalizing the agency's approval of PM2.5 contingency measures for the Valley challenged in this case. On December 16, 2024, EPA published a notice in the *Federal Register* announcing the *Final Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter* ("Final Guidance"). 89 Fed. Reg.

C. PM2.5 contingency measures submitted for EPA approval.

Following EPA's issuance of its draft revised guidance, California submitted to EPA three separate measures intended, collectively, to meet the Valley's contingency measure requirements for the 1997 Annual, 2006 24-Hour, and 2012 Annual PM2.5 Standards. 2-ER-114, 118, 121–124, 88 Fed. Reg. at 87988, 87992, 87995–98; *accord id*. at 87999/3 (noting "the same set of contingency measures has been submitted to address the contingency measure requirements for more than one PM2.5 NAAQS").

1. Residential Wood Burning Contingency Measure.

The purpose of the Valley's "Residential Wood Burning Contingency Measure" is to "extend certain wood-burning curtailment restrictions Valley-wide." 2-ER-117, 88 Fed. Reg. at 87991. This contingency measure builds on an existing District rule (Rule 4901) that imposes episodic residential wood burning restrictions—which vary by county and type of device—when air quality forecasts indicate pollution levels will exceed certain thresholds. 2-ER-121, 88 Fed. Reg. at 87995. The contingency measure, if triggered, requires the District to increase its woodburning restrictions. 2-ER-122, 88 Fed. Reg. at 87996/1; 2-ER-248. More

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101602 (Dec. 16, 2024). The Final Guidance reiterates that it does not establish legally binding requirements and does not constitute final agency action. Final Guidance, at 2 n.1, https://www.epa.gov/system/files/documents/2024-12/cmtf-final-guidance-signature-version-11-22-24_clean_0.pdf.

specifically, upon an initial finding that the Valley has failed to make reasonable further progress, failed to attain a PM2.5 standard by the attainment date, or failed to meet a quantitative milestone or submit a milestone report ("triggering events"), the contingency measure would extend lower curtailment thresholds typically reserved for the most polluted "hot spot" counties to all counties. 2-ER-122, 88 Fed. Reg. at 87996/1. And if a second triggering event occurs, the measure would lower the threshold for disallowing the use of certain unregistered woodburning devices in all Valley counties. *Id.*

2. Rural Open Areas Contingency Measure.

The Rural Open Areas Contingency Measure is intended to "extend certain fugitive dust requirements to certain open areas that are not currently subject to control requirements." 2-ER-117, 88 Fed. Reg. at 87991/1. Pursuant to an existing District rule (Rule 8051), open areas of certain sizes in the Valley must implement control measures to stabilize the land surface and prevent windblown fugitive dust. 2-ER-123–24, 88 Fed. Reg. at 87997–98. Upon the occurrence of a triggering event, the contingency measure would "lower the applicability threshold for rural open areas from 3.0 acres to 1.0 acres," requiring more rural properties to implement control measures and "thereby reducing windblown fugitive dust, including the direct PM2.5 portion of such dust emissions." 2-ER-123, 88 Fed. Reg. at 87997/3; *see also* 2-ER-167–69. The Rural Open Areas Contingency

Measure is designed to address only one triggering event. 2-ER-123, 88 Fed. Reg. at 87997.

3. Smog Check Contingency Measure.

The Smog Check Contingency Measure purports to reduce pollution by expanding the scope of vehicles subject to the vehicle inspection and maintenance program known as "Smog Check." 2-ER-124, 88 Fed. Reg. at 87998/3. Administered by CARB, the Bureau of Automotive Repair, and the Department of Motor Vehicles, the purpose of the program "is to reduce emissions from in-use motor vehicles in need of repairs," but "certain vehicles are exempt from the biennial inspection requirement, including vehicles eight or fewer model years old." *Id.* The contingency measure specifies that, upon the occurrence of an initial triggering event, CARB must initiate a process that "would narrow the newer vehicle exemption [from Smog Check] from eight or fewer model years old to seven or fewer model years old throughout the San Joaquin Valley." *Id.*; *see also* 2-ER-188–90. Upon a second triggering event, the measure requires CARB to "further narrow the newer vehicle exemption by another year" to six or fewer model years old. 2-ER-124, 88 Fed. Reg. at 87998/3 n.87; *see also* 2-ER-189.

California intends for the Smog Check Contingency Measure to not only provide contingency emissions reductions for the 1997 Annual, 2006 24-Hour, and

2012 Annual PM2.5 NAAQS, but for three ozone NAAQS as well. 2-ER-175–76 tbl.1; 2-ER-21, 25 tbl.2, 89 Fed. Reg. 56222, 56226 tbl.2 (July 9, 2024).

D. EPA's proposal to approve the PM2.5 contingency measures.

On December 20, 2023, EPA proposed approval of the Residential Wood Burning, Rural Open Areas, and Smog Check Contingency Measures as meeting the requirements of section 172(c)(9), 42 U.S.C. § 7502(c)(9), for the 1997 Annual, 2006 24-Hour, and 2012 Annual PM2.5 Standards in the Valley. 2-ER-114, 88 Fed. Reg. at 87988. EPA's proposed approval also proposed abandonment of the agency's long-standing interpretation of section 172(c)(9), reflecting the less stringent approach it had pledged to California regulators it would follow.

First, EPA proposed to revise its long-standing interpretation of the amount of emissions reductions that contingency measures should achieve, namely, one year's worth of reasonable further progress. Instead, EPA proposed to apply a lesser target for emissions reductions, called "one year's worth of 'progress.'" 2-ER-120, 125–31, 88 Fed. Reg. at 87994, 87999–8005. According to EPA:

> One year's worth of ''progress'' is calculated by determining the average annual reductions between the base year emissions inventory and the projected attainment year emissions inventory, determining what percentage of the base year emissions inventory this amount represents, then applying that percentage to the projected attainment year emissions inventory to determine the amount of reductions needed to ensure ongoing progress if contingency measures are triggered.

2-ER-120, 88 Fed. Reg. at 87994.

Utilizing the one year's worth of progress benchmark, EPA's proposed rule identified lower emissions reductions targets for the PM2.5 contingency measures than would have applied had EPA required the Valley to reduce emissions equal to the one year's worth of reasonable further progress benchmark. 2-ER-130–31 tbl.3, 88 Fed. Reg. at 88004–05 tbl.3. The proposed rule indicated that the disparity would be particularly pronounced for reductions in the precursor pollutant NOx. For example, whereas California would have been required to reduce 18.4 tons of NOx emissions to demonstrate one year's worth of reasonable further progress for the 2006 24-Hour PM2.5 Standard, based on one year's worth of progress, EPA proposed to lower the emissions reduction target to just 6.7 tons of NOx, a 64% reduction. *Id*. Employing the one year's worth of progress approach, EPA similarly proposed to slash the NOx emissions reduction target for the 1997 Annual PM2.5 Standard (lowering it from 16.7 to 7.9 tons) and 2012 Annual PM2.5 Standard (lowering it from 15.3 to 8.7 tons). *Id*.[7]

Second, beyond setting lower emissions reduction targets based on one year's worth of progress, EPA suggested it would depart even further from its

[7] The Valley's emissions reductions targets for direct PM2.5 are smaller than the targets for NOx and less affected by EPA's new one year's worth of progress benchmark (as opposed to one year's worth of reasonable further progress) because the Valley's PM2.5 attainment SIPs rely primarily on precursor NOx reductions to demonstrate the plans will attain the PM2.5 standards. 2-ER-212–13 tbl.4, 88 Fed. Reg. at 45297–98 tbl.4 (1997 Annual PM2.5 Standard); 3-ER-373, 402 tbl.6, 85 Fed. Reg. 17382, 17411 tbl.6 (Mar. 27, 2020) (2006 24-Hour PM2.5 Standard).

previous interpretation of section 172(c)(9), 42 U.S.C. § 7502(c)(9), proposing to excuse California from meeting these lower targets based on an "infeasibility demonstration." 2-ER-120, 131–35, 88 Fed. Reg. at 87994, 88005–09. Asserting that the agency possesses authority to accept a "reasoned justification" from a state that only certain "existing and potential control measures . . . are feasible," EPA proposed to find that California "adequately" justified limiting itself to adopting the Residential Wood Burning, Rural Open Areas, and Smog Check Contingency Measures. 2-ER-120, 131, 88 Fed. Reg. at 87994, 88005.

EPA's proposed rule acknowledged that accepting California's infeasibility analysis—and its assertion that no measures beyond the three PM2.5 contingency measures are feasible—ultimately "would provide only a portion" of the emissions reductions required to meet one year's worth of progress for NOx (and an even smaller portion of the emissions reductions required to meet one year's worth of reasonable further progress). 2-ER-131, 88 Fed. Reg. at 88005. EPA's proposed rule stated that, under the most favorable estimation scenario, the Residential Wood Burning, Rural Open Areas, and Smog Check Contingency Measures will only produce 15.7% of the NOx reductions required to meet the one year's worth of progress target for the 1997 Annual PM2.5 Standard; 8.8% of the NOx reductions required to meet the one year's worth of progress target for the 2006 24-Hour PM2.5 Standard; and 13.1% of the NOx reductions required to meet the one year's worth of progress target for the 2012 Annual PM2.5 Standard. *Id.* EPA's estimates for the percentages of one year's worth of reasonable further progress of NOx emissions accomplished by the contingency measures are even lower, at 6.3%, 1.3%, and 6.3% of the respective targets. *Id.*[8]

On January 19, 2024, Air Advocates submitted comments objecting to the proposed approval of the PM2.5 contingency measures for the Valley. 2-ER-31; 2-ER-103.

E. EPA approves the PM2.5 contingency measures as proposed.

On October 4, 2024, EPA approved the Residential Wood Burning Contingency Measure, Rural Open Areas Contingency Measure, and Smog Check Contingency Measure as the contingency measures for the 1997 Annual, 2006 24-hour, and 2012 Annual PM2.5 Standards. 1-ER-2, 1-ER-18, 89 Fed. Reg. at 80749, 80765.

EPA's final approval largely adopts the analysis, findings, and conclusions presented in the agency's proposed rule. The final rule does, however, provide revised estimates for total emissions reductions for implementation of all three

[8] EPA estimates percentages of the targets accomplished "with trading" and "no trading." 2-ER-130–31 tbl.3, 88 Fed. Reg. at 88004–05 tbl.3. "Trading" refers to "interpollutant trading," wherein EPA credited some "excess" reductions of direct PM2.5 emissions as counting towards the emissions reduction targets for NOx by applying a 6:1 trading ratio for NOx to PM2.5. 2 ER-129–30, 88. Fed. Reg. at 88003–04.

contingency measures that were "slightly greater" than the proposed rule. 1-ER-5, 89 Fed. Reg. at 80752. *Compare id*. at tbls.2 & 3, *with* 2-ER130–31 tbls.2 & 3, 88 Fed. Reg. at 88004–05 tbls.2 & 3.

In response to Air Advocates' comments, the final rule also acknowledges that, if one triggering event occurs, the Valley's package of three PM2.5 contingency measures will be rendered deficient. As described above, "all three contingency measures provide for implementation of more stringent requirements upon a first triggering event, and two of the contingency measures also provide for implementation of yet more stringent requirements upon a second triggering event (i.e., further tightening of the requirements beyond that triggered by the first event)." 1-ER-12, 89 Fed. Reg. at 80759/1. Still, in the final rule, EPA admits that the measures collectively are only sufficient to address one triggering event across the three PM2.5 NAAQS that the measures purport to address:

> [W]e find that a SIP deficiency would arise upon the first triggering event notwithstanding the existence of the built-in provisions for further reductions upon a second triggering event. This is because the adequacy of the contingency measure SIP depended on measures that are now being implemented as a result of the first triggering event, meaning they can no longer be used to satisfy the contingency measure requirements for subsequent triggering events.

1-ER-12, 89 Fed. Reg. at 80759/2. EPA stated "we expect that CARB and the District would adopt and submit a SIP revision" including "additional contingency measures as needed" within one year of the triggering event. *Id*.

F. Air Advocates' petition for review.

On December 2, 2024, Air Advocates timely filed their petition for review. Docket Entry No. 1. On January 2, 2025, CARB and the District move to intervene in the case. Docket Entry No. 12. On February 10, 2025, the Court granted intervention. Docket Entry No. 16.

STANDING

Air Advocates have standing to challenge EPA's approval of California's PM2.5 contingency measures for the San Joaquin Valley because their respective members are residents of the Valley, or work and recreate in the Valley, and suffer from the Valley's continuing fine particulate matter air pollution crisis. EPA's approval allows California to avoid implementing the robust air pollution control measures promised by the Clean Air Act.

An organization has standing to bring an action on behalf of its members if: (1) neither the claim asserted nor the relief requested require its members to participate directly in the lawsuit; (2) it is seeking to protect interests that are germane to its purpose; and (3) its members would have standing to sue individually. *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

Direct participation of the members of Air Advocates' organizations is not necessary in this case, and the interests Air Advocates seek to advance through this litigation fall squarely within each of their organization's respective missions. *See* Decls. of Veronica Aguirre ¶¶ 3–4; Estela Escoto ¶¶ 4–5, 8; Kevin Hamilton, ¶¶ 4, 13; Gordon Nipp ¶¶ 6–7; Mark Rose ¶¶ 6–10.[9] Each of the Air Advocate organizations has members with standing to bring this suit individually because: (1) at least one of its members has suffered an "injury in fact;" (2) the injury is fairly traceable to EPA's illegal conduct; and "(3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *AIR II*, 10 F.4th at 943 (citing *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000)).[10]

Air Advocates' members satisfy the "injury in fact" requirement because they live, work, and recreate in the San Joaquin Valley and are suffering from the health and welfare impacts of PM2.5 pollution in the Valley. *See generally* Decls. of Veronica Aguirre, Estela Escoto, William Fjelbo, Kevin Hamilton, Vincent Hoenigman, Gordon Nipp, Mark Rose. For example, their members and members' families suffer adverse health consequences and discomfort when air pollution levels are high; they curtail physical exercise and outdoor activities due to high

[9] Air Advocates have concurrently filed a Motion for Leave to File Standing Declarations. All cited declarations are attached to this brief.

[10] Only one petitioner need establish standing. *Massachusetts v. EPA*, 549 U.S. 497, 518 (2007); *Ocean Advocs. v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 859 n.3 (9th Cir. 2005).

pollution concentrations, lessening their quality of life and impairing recreational enjoyment; and they witness diminished aesthetic views—both locally and in nearby parks—as well as upsetting environmental degradation. *See* Aguirre Decl. ¶¶ 7–9; Escoto Decl. ¶¶ 10–13; Fjelbo Decl. ¶¶ 9–10, 12–14; Hamilton Decl. ¶¶ 14, 20–32; Hoenigman Decl. ¶¶ 4, 6, 8–10; Nipp Decl. ¶¶ 9, 11–18; Rose ¶¶ 15–21.

This Court has held that a petitioner "will suffer injury if compelled to breathe air less pure than that mandated by the Clean Air Act." *Nat'l Res. Def. Council, Inc. v. EPA*, 507 F.2d 905, 910 (9th Cir. 1974); *accord AIR II*, 10 F.4th at 943 (stating that group "members have established injury in fact by submitting declarations containing credible allegations of respiratory distress" resulting from "pollution in the Valley"); *Hall v. Norton*, 266 F.3d 969, 976 (9th Cir. 2001) ("[E]vidence of a credible threat to the plaintiff's physical well-being from airborne pollutants" establishes injury in fact.). Further, recreational and aesthetic injuries from air pollution confer standing. *Laidlaw*, 528 U.S. at 183; *AIR II*, 10 F.4th at 943.

The continuing injuries suffered by Air Advocates' members are traceable to EPA's conduct because EPA's approval allowed California to adopt unlawfully weak contingency measures that fail to provide the emission reductions required under the Clean Air Act. Although the inadequate contingency measures only activate upon the occurrence of a triggering event like a failure to meet an attainment deadline, an injury is fairly traceable to a challenged action as long as the links in the proffered chain of causation "are 'not hypothetical or tenuous' and remain 'plausib[le].'" *Maya v. Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011) (alteration in original) (quoting *Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d 835, 849 (9th Cir. 2002)). This Court previously ruled that parties challenging an EPA approval of contingency measures met the traceability requirement because the Valley "has repeatedly failed to meet air quality standards," meaning "[t]he threat" that it will continue to do so and therefore activate contingency measures "is neither conjectural nor hypothetical, but a reasonable inference from the historical record." *AIR II*, 10 F.4th at 944.

A favorable order by this Court will provide redress to Air Advocates for the illegal and harmful effects that flow from EPA's violations of the Clean Air Act. An order remanding EPA's approval means that California will need to revisit its decision making and adopt meaningful control measures in compliance with the Clean Air Act. *See*, *e.g.*, *Ctr. for Energy & Econ. Dev. v. EPA*, 398 F.3d 653, 657 (D.C. Cir. 2005) (holding that "the redressability requirement may be satisfied . . . by vacating the challenged rule and giving the aggrieved party the opportunity to participate in a new rulemaking") (quoting *Am.'s Cmty. Bankers v. FDIC*, 200 F.3d 822, 828–29 (D.C. Cir. 2000)); *see also AIR II*, 10 F.4th at 943 (concluding that parties challenging EPA's approval of contingency measures satisfied redressability requirement).

For the above reasons, Air Advocates have standing to challenge EPA's approval of California's PM2.5 contingency measures for the Valley.

SUMMARY OF THE ARGUMENT

The Clean Air Act direct states to adopt contingency measures as part of the SIP to compensate for any shortfall if the SIP fails to make reasonable further progress or to attain a NAAQS. Shortly after Congress amended the Act in 1990, EPA contemporaneously interpretated section 172(c)(9) of the Act, 42 U.S.C. § 7502(c)(9), to establish the amount of emissions reductions contingency measures must achieve. EPA equated that amount to the annual amount required for reasonable further progress ("one year's worth of reasonable further progress") and maintained that benchmark for more than thirty years. The plain language, statutory scheme, and congressional intent support the best reading of section 172(c)(9) to require that contingency measures achieve emissions reductions amounting to one year's worth of reasonable further progress.

EPA unlawfully and arbitrarily approved the Residential Wood Burning, Rural Open Areas, and Smog Check Contingency Measures as meeting the contingency measures requirements for each of the 1997 Annual, 2006 24-Hour, and 2012 Annual PM2.5 Standards in three significant ways. First, EPA abandoned the one year's worth of reasonable further progress benchmark and approved the contingency measures based on a new "one year's worth of progress" benchmark. One year's worth of progress discounts contingency measures to between one-half and one-third of one year's worth of reasonable further progress. This new interpretation severed contingency measures from the reasonable further progress benchmark even though California's obligation to achieve reasonable further progress remains unchanged. The new interpretation also subordinates contingency measures in the two-step statutory scheme where Congress wanted the SIP to have both a Plan A primary strategy and Plan B contingency measures if the SIP fails.

Second, EPA approved the three contingency measures even though the measures would provide *de minimis* emissions reductions notwithstanding the one year's worth of progress benchmark. EPA did so by inventing a "feasibility" exemption absent from the plain language of section 172(c)(9) and in conflict with the statutory scheme. EPA's approval subjectively excused California from providing nothing more than "trifling emission control measures." *Comm. for a Better Arvin*, 786 F.3d at 1178.

Third, EPA unlawfully and arbitrarily approved the three contingency measures when the measures will become deficient after providing emissions reductions for just the first "triggering event." EPA conceded this deficiency but approved the contingency measures nonetheless premised upon an unenforceable "expectation" California would adopt and submit additional contingency measures.

Congress adopted section 172(c)(9) to provide meaningful, back-up air pollution controls. The best reading of the statute should retain the statutory link to reasonable further progress and require contingency measures to achieve emissions reductions equivalent to one year's worth of reasonable further progress without exception.

STANDARD OF REVIEW

The Clean Air Act does not specify a standard of review for challenges to EPA approvals of SIP revisions. Accordingly, this Court has applied the general standard of review for agency actions set forth in section 706 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A). *Sierra Club v. EPA*, 671 F.3d 955, 961 (9th Cir. 2012) (citation omitted). Section 706 of the APA states, in relevant part: "The reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Under this standard, the Court reviews the record "to ensure that agency decisions are founded on a reasoned evaluation of the relevant factors, and may not rubber-stamp . . . administrative decisions that [are] . . . inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute . . . ." *Latino Issues F. v. EPA*, 558 F.3d 936, 941 (9th Cir. 2009) (quoting *Friends of Yosemite*

Valley v. Norton, 348 F.3d 789, 793 (9th Cir.2003)).

This Court reviews EPA's construction of the Clean Air Act de novo, exercising its "independent judgment in deciding whether [the] agency has acted within its statutory authority, as the APA requires." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391, 392 n.4, 412 (2024). *Loper Bright* instructs the Court to "deploy[] its full interpretive toolkit" in order to determine the statute's "single, best reading." *Id*. at 400, 409; *accord id*. at 400 ("In the business of statutory interpretation, if it is not the best, it is not permissible.")

In reviewing whether an agency action is arbitrary, capricious, or an abuse of discretion under the APA, the court "must determine whether there is a rational connection between the facts found and the choices made . . . and whether [the agency] has committed a clear error of judgment. *Or. Nat. Res. Council v. Allen*, 476 F.3d 1031, 1036 (9th Cir. 2007) (citation omitted). Where an agency has "offered an explanation for its decision that runs counter to the evidence before the agency," the court will reverse an agency's action under the arbitrary and capricious standard of review. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

ARGUMENT

I. EPA violated the Clean Air Act when it approved PM2.5 contingency measures for the Valley that do not provide emissions reductions equivalent to one year's worth of reasonable further progress.

A. Section 172(c)(9) of the Clean Air Act requires contingency measures to provide one year's worth of reasonable further progress.

Congress adopted section 172(c)(9) of the Act, 42 U.S.C. § 7502(c)(9), to provide meaningful back-up air pollution controls when the primary strategies in a SIP fail. The language of the provision, the legislative history, and the statutory scheme all reinforce that requiring contingency measures to achieve one year's worth of reasonable further progress is the best reading of the provision. Applying the traditional tools of statutory interpretation, this Court should interpret section 172(c)(9) to require meaningful emissions reductions equivalent to the one year's worth of reasonable further progress benchmark and, therefore, remand EPA's approval of the Valley's PM2.5 contingency measures which do not meet the statutory standard.

The Court's statutory analysis starts with the plain language of section 172(c)(9), *see Lopez v. Garland*, 116 F.4th 1032, 1043 (9th Cir. 2024), which reflects Congress's intent that contingency measures should achieve emissions reductions equivalent to one year of reasonable further progress. Section 172(c)(9) states that a plan to attain the PM2.5 standards "shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part." 42 U.S.C. § 7502(c)(9). The use of the disjunctive word "or" in the phrase "to make reasonable further progress, *or* to attain the [NAAQS]" shows Congress wanted contingency measures to address and make up for failures of either statutory requirement. *See Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 87 (2018).

While the language of section 172(c)(9) requires nonattainment areas to adopt contingency measures to address potential failures "to make reasonable further progress, or to attain the [NAAQS]," 42 U.S.C. § 7502(c)(9), only the reference to "reasonable further progress" suggests a specific quantity of emissions to be reduced. Congress defined "reasonable further progress" to mean "annual incremental reductions . . . for the purpose of ensuring attainment." 42 U.S.C. § 7501(1).[11] Conversely, Congress did not define "attain" or "attainment" as an amount of pollution to be reduced. Rather, attainment is an outcome, and the Act directs EPA to make attainment findings "based on the area's air quality as of the attainment date." 42 U.S.C. § 7509(c). The language of section 172(c)(9), 42 U.S.C. § 7502(c)(9), thus supports reading the section to equate the amount of

[11] Congress separately defined reasonable further progress for ozone nonattainment areas to mean 3% of baseline emissions unless EPA makes specific findings otherwise. *See* 42 U.S.C. § 7511a(c)(2)(B).

pollution required to be reduced by contingency measures with the amount of emissions reductions needed to make one year's worth of reasonable further progress.

The legislative history of the 1990 Clean Air Act Amendments confirms that Congress wanted contingency measures to accomplish emissions reductions comparable to one year's worth of reasonable further progress. In explaining the contingency measure requirement in section 172(c)(9), the House Report states that "[s]uch measures are to take effect without further action by the State or Administrator, and *are to be adequate to compensate for any emission reduction shortfall.*" H.R. Rep. No. 101-490, *reprinted in Congressional Research Service, A Legislative History of the Clean Air Act Amendments of 1990*, at 3248 (1993) (emphasis added). Because contingency measures are triggered by a failure to achieve reasonable further progress or to attain a NAAQS, the only way to ensure that such measures are "adequate to compensate for any emission reduction shortfall" is to tie the performance of the measures to the underlying failure—i.e., to one year's worth of reasonable further progress.

This Court, in its recent decision in *AIR II*, both highlighted and gave effect to the statutory link between contingency measures and reasonable further progress. Recognizing "the need for robust contingency measures," the Court rejected EPA's approval of weak measures that "severed the relationship between the requirement of contingency measures and the benchmark of reasonable further progress." *AIR II*, 10 F.4th at 946–47. According to the Court, EPA lacked an "adequate explanation" for approving "far more modest" contingency measures instead of insisting that they meet "the benchmark of reasonable further progress." *Id*. at 946.

Other provisions of the Act reinforce that section 172(c)(9) is best read as requiring contingency measures to reduce emissions equivalent to one year's worth of reasonable further progress. The Court should "read the words 'in their context and with a view to their place in the overall statutory scheme.'" *King v. Burwell*, 576 U.S. 473, 486 (2015) (quoting *FDA v. Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 133 (2000)).

Here, Section 172(c)(9) prescribes a crucial role for contingency measures among the escalating steps that Congress established for areas that fail to attain the PM2.5 NAAQS. Specifically, "[c]ontingency measures serve the purpose of providing additional emission reductions during the period after a failure to meet [reasonable further progress] or failure to attain as the state prepares a new SIP submission to rectify the problem." 2-ER-119, 88 Fed. Reg. at 87993/3. Intended to provide meaningful emissions reductions during the time interval between a state's failing and soon-to-be-more-stringent SIP, contingency measures should be understood to require one year's worth of reasonable progress. Otherwise, any lesser requirement undermines the consistent, stepwise progress toward attainment that the Clean Air Act's PM2.5 nonattainment provisions were intended to achieve. *See* 42 U.S.C. § 7513a(b)(2), (d) (requiring more stringent plans after moderate and serious areas' failure to attain).

Further, interpreting section 172(c)(9) to require contingency measures to reduce emissions equivalent to one year's worth of reasonable further progress best serves the Clean Air Act's broader remedial scheme. "It is a 'familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes.'" *Wadler v. Bio-Rad Lab'ys, Inc.*, 916 F.3d 1176, 1187 (9th Cir. 2019) (quoting *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967)). The purpose of the Act is to protect and enhance the nation's air quality in order to promote public health and welfare. 42 U.S.C. § 7401(b). Congress wanted to achieve these goals by attaining the particulate matter standards as expeditiously as practicable while also mandating minimum annual incremental reductions. 42 U.S.C. §§ 7502(c)(2) (requiring reasonable further progress), 7513(c)(1)–(2), (e) (requiring attainment as expeditiously as practicable). Section 172(c)(9) therefore should be interpreted as requiring meaningful and material contingency measures based on one year's worth of progress to protect public health if a SIP fails because the interpretation is "grounded in the statute's text and structure." *Wadler*, 916 F.3d at 1187 (quoting *CTS Corp. v. Waldburger*, 573 U.S. 1, 134 (2014)).

B. EPA's "one year's worth of progress" benchmark violates section 172(c)(9) of the Clean Air Act.

In its final rule approving PM2.5 contingency measures for the Valley, EPA abandoned the agency's long-standing use of a one year's worth of reasonable further progress benchmark in favor of a weak alternative untethered from the Act's statutory language and structure. Rather than abiding by the statutory link to reasonable further progress set forth in section 172(c)(9), 42 U.S.C. § 7502(c)(9), EPA invents a new concept it calls "one year's worth of progress." Applying the one year's worth of progress approach, EPA lowered the amount of NOx emissions reductions that would be required under one year's worth of reasonable further progress by 53%, 64%, and 43% for the 1997 Annual, 2006 24-Hour, and 2012 Annual PM2.5 Standards, respectively. *See* 1-ER-5 tbl.3, 89 Fed. Reg. at 80752 tbl.3.

Asserting that the language of section 172(c)(9) "does not specify what amount of emission reductions" contingency measures should achieve, EPA offers three explanations for why the agency "has taken a policy approach" and retreated from its thirty-year-old position requiring stringent contingency measures. 1-ER-6, 89 Fed. Reg. at 80753. Because the agency has abandoned a prior interpretation that was "issued contemporaneously with the statute" and "remained consistent over time" until now, its new interpretation does not command a high degree of respect. *See Loper Bright*, 603 U.S. at 394. Even more fundamentally, as discussed below, none of EPA's reasons reflect valid reasoning grounded in the language of the statute, meaning they lack the "power to persuade." *See Lopez*, 116 F.4th at 1039 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)).

First, EPA argues that continued adherence to the one year's worth of reasonable further progress benchmark could hypothetically result in reducing emissions more than necessary. 1-ER-7, 89 Fed. Reg. at 80754/1. EPA does not substantiate its reasoning with any statutory text, structure, or legislative history. Instead, EPA observes that one year's worth of reasonable further progress "*may in some cases* lead to an amount that is greater than what typically would be needed to make up for a shortfall in [reasonable further progress] or for attainment purposes." *Id.* (citing Draft Revised Contingency Measures Guidance, 2-ER-278–80) (emphasis added). But EPA does not provide any evidence or examples showing particulate matter contingency measures over-performing in the San Joaquin Valley or anywhere else. *See generally* 1-ER-7, 89 Fed. Reg. at 80754. Nor does it explain why, even if valid, this particular concern should dictate interpretation of section 172(c)(9) of the Act.

Second, EPA asserts that it has shifted its approach to better "recognize[] attainment of the NAAQS as the primary objective of the nonattainment plan requirements." 1-ER-7, 89 Fed. Reg. at 80754/1. According to EPA, it interprets section 172(c)(9) to "give priority to adopting control measures to attain in the first place, even if that leaves fewer options for contingency measures in the event of a failure to attain or make [reasonable further progress]." 1-ER-9, 89 Fed. Reg. at 80756/1. EPA does not attempt to reconcile its interpretation with the text of section 172(c)(9), which refers to both an area's failure "to make reasonable further progress, or to attain the [NAAQS] by the attainment date." 42 U.S.C. § 7502(c)(9).

Moreover, EPA's reading of section 172(c)(9) ignores the Act's purposeful sequence of the Plan A primary strategy and Plan B contingency measures. The Act's nonattainment provisions neither state nor suggest that contingency measures must yield to a state's primary attainment strategy. To the contrary, Congress listed contingency measures on equal footing with elements comprising the primary attainment strategy, including enforceable measures necessary and appropriate to attain the NAAQS, reasonable further progress, and controls for major stationary sources. *See* 42 U.S.C. § 7502(c). The Court should give effect to contingency measures as a key component of the sequential, separate, and distinct requirements in the statutory scheme. *See Eli Lilly & Co. v. Medtronic, Inc.*, 496 U.S. 661, 668–69 (1990) (interpreting provision of the Federal Food, Drug, and Cosmetic Act based on the Act's "structure . . . taken as a whole").

EPA insists that its reading of section 172(c)(9) operates "consistent[ly] with the CAA's general scheme of subjecting areas with higher classifications to more stringent requirements." 1-ER-8, 89 Fed. Reg. at 80755/3. The agency's interpretation has the opposite effect, however, relieving areas with higher nonattainment classifications—like the San Joaquin Valley here—of the obligation to enact robust contingency measures to address SIP failures. Perversely, EPA's reading of section 172(c)(9) means that people living in the highly polluted Valley will receive the benefit of fewer immediate particulate matter reductions when a SIP fails.

At bottom, EPA's insistence that it will focus almost exclusively on primary attainment strategies at the expense of adopting meaningful PM2.5 contingency measures unlawfully continues EPA's practice of excusing the Valley from instituting robust contingency measures based on already adopted measures in the SIP. As this Court explained in *AIR II*: "If already-implemented measures cannot themselves be contingency measures—and *Bahr* makes clear that they cannot—then neither can that be a basis for declining to establish contingency measures that would otherwise be appropriate." 10 F.4th at 946 (referencing *Bahr*, 836 F.3d at 1236).

Third, EPA touts that its one year's worth of progress approach will provide consistency between ozone-based contingency measures governed by a different section of the Act and PM2.5-based contingency measures. According to EPA, its new interpretation of section 172(c)(9) "takes into account the declining emissions inventories between the base year and attainment year for a given nonattainment area and aligns the metric for determining the amount of emission reductions that contingency measures should achieve for ozone and particulate matter (PM)." 1-ER-7, 89 Fed Reg. at 80754/1.

While ozone and PM2.5 nonattainment areas are both subject to section 172(c)(9)'s requirement to institute contingency measures to address a failure "to make reasonable further progress, or to attain the [NAAQS]," 42 U.S.C. § 7502(c)(9), the plain language of the Act differentiates what constitutes reasonable further progress for ozone areas from what constitutes reasonable further progress for particulate matter areas. For ozone nonattainment areas, section 182 defines reasonable further progress as reductions in emissions equivalent to 3% of the baseline. *Id.* § 7511a(c)(2)(B). In contrast, section 171 defines reasonable further progress for particulate matter areas as "annual incremental reductions in emissions" necessary to attain the NAAQS. *Id.* § 7501(1). Congress opted to treat ozone and particulate matter nonattainment areas differently in the statutory scheme, and EPA's interest in treating them similarly does not justify weakening contingency measures for PM2.5 areas.

II. EPA premised its Approval on non-Statutory, standardless considerations of feasibility and unlawfully approved contingency measures that only achieve *de minimis* NOx emissions reductions.

As set forth above, the best reading of section 172(c)(9) of the Act, 42

U.S.C. § 7502(c)(9), requires contingency measures to reduce emissions equivalent to one year's worth of reasonable further progress. For the Valley, not only did EPA apply its new, much weaker benchmark of "one year's worth of progress"—it largely exempted California from meeting even this much lower bar. It did so on the basis of a purported "infeasibility demonstration" wherein California claimed that it could not feasibly adopt any contingency measures beyond the Residential Wood Burning, Rural Open Areas, and Smog Check Contingency Measures. Section 172(c)(9) does not include any feasibility exception, however, nor does it otherwise allow the standardless and arbitrary approach to evaluating feasibility that EPA applied here. Further, section 172(c)(9) does not condone the approval of contingency measures that only deliver *de minimis* NOx emissions reductions.

A. EPA fabricated a feasibility exemption from contingency measure requirements that the agency applied arbitrarily.

The plain language of section 172(c)(9) does not identify any exceptions for feasibility considerations or otherwise. The provision flatly declares that an attainment plan "shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part." 42 U.S.C. § 7502(c)(9).

EPA admits, as it must, that "section 172(c)(9) does not explicitly provide for consideration of whether specific measures are feasible." 1-ER-10, 89 Fed.

Reg. at 80757/1; *accord* 2-ER-120, 88 Fed. Reg. at 87994/3. Nonetheless, in approving the Valley's three PM2.5 contingency measures, EPA averred that it could exempt a state from the requirement to adopt robust contingency measures so long as a state "explains and documents how it evaluated all existing and potential control measures . . . and has reached reasonable conclusions regarding whether such measures are feasible." 1-ER-9, 89 Fed. Reg. at 80756/3.

As support for its interpretation of section 172(c)(9), EPA highlights that "the statutory provisions applicable to other nonattainment area plan control measure requirements, including RACM/RACT, BACM/BACT, and MSM, allow air agencies to exclude certain control measures that are deemed unreasonable or infeasible." 1-ER-10, 89 Fed. Reg. at 80757/1. But far from supporting EPA, Congress's inclusion of language addressing feasibility in other, comparable provisions but not in section 172(c)(9) indicates the omission was intentional because "[i]t is generally presumed that Congress acts intentionally and purposely" when it "includes particular language in one section of a statute but omits it in another." *City of Chicago v. Env't Def. Fund,* 511 U.S. 328, 338 (1994) (noting "Congress knew how to draft a[n] . . . exemption . . . when it wanted to."); *see also AIR I,* 686 F.3d at 675. Consequently, the Court should not infer that section 172(c)(9) allows EPA to grant an exemption that does not appear in the next.

In any event, even if something akin to a feasibility exemption could be read into section 172(c)(9), EPA fails to identify the contours of the exemption or the criteria that it will consider when evaluating state claims of infeasibility. Crucially, the Act does not define feasibility (or infeasibility) in one universal way, with the relevant factors variable across controls measures.[12] Indeed, EPA concedes that determining infeasibility for the various nonattainment plan control measures "depend[s] on the requirement." 1-ER-10, 89 Fed. Reg. at 80757/2.

Sowing even further confusion, EPA states that, "while the analytical approach to identifying and evaluating existing and potential" contingency measures "may be similar to those used for RACM/RACT, BACM/BACT, and MSM . . . , the EPA expects that the state 'should not simply repeat the control strategy's infeasibility showing'" for such other measures. 1-ER-10, 89 Fed. Reg. at 80757. EPA seems to suggest that there may be a higher threshold for deeming a control measure infeasible for purposes of section 172(c)(9), noting "[t]he contingency measure requirement is in addition to the other control measure

[12] *See, e.g.*, 42 U.S.C. § 7502(c)(1) (requiring "reasonably available control measures" or RACM for all moderate nonattainment plans); *id*. § 7511b(e)(1)(A) (defining "best available controls" for certain ozone sources); *id*. § 7513(e) (addressing "feasibility" for purposes of determining the "most stringent measures" or MSM for serious particulate matter areas); *id*. § 7513a(b)(1)(B) (requiring "best available control measures" or BACM for serious particulate matter nonattainment areas); *id*. § 7513b (requiring EPA to issue "RACM and BACM guidance" for certain sources of particulate matter).

requirements," but EPA does not otherwise identify any standards, criteria, or other clues about how it will administer the exception to section 172(c)(9) that it made out of whole cloth. Nothing in section 172(c)(9) suggests EPA may grant standardless exemptions that threaten to swallow the whole of the contingency measure requirement, or to otherwise exercise its authority in such an arbitrary manner.

Finally, it bears noting that EPA undermines its subjective finding that California reasonably excluded candidate contingency measures. In the same final action, EPA states that it expects California can and will adopt and submit additional contingency measures if EPA declares California must do so. 1-ER-12, 89 Fed. Reg. at 80759/2. According to the final rule, upon the occurrence of the first triggering event which would render the contingency measures deficient, EPA "expect[s] the SIP revision to take into account the emission reductions from the two remaining contingency measures and to include additional contingency measures as needed." *Id*. There must be more viable contingency measures available if EPA expects California to be at the ready adopt and submit them as needed.

B. Section 172(c)(9) of the Clean Air Act does not condone contingency measures that merely provide *de minimis* NOx emissions reductions.

The Residential Wood Burning, Rural Open Areas, and Smog Check Contingency Measures collectively provide *de minimis* NOx emissions reductions, while EPA accepted the District and CARB's subjective assertions that all other potential contingency measures are infeasible. *See* 1-ER-9–11, 89 Fed. Reg. at 80756–58; 2-ER131–35, 88 Fed. Reg. at 88005–09. The plain language of section 172(c)(9) of the Act, 42 U.S.C. § 7502(c)(9), requires much more, however. As a matter of "statutory interpretation[,] the ancient principle that the law does not care about trifles" applies to the Clean Air Act. *Comm. for a Better Arvin*, 786 F.3d at 1178 (citing *Skaff v. Meridien N. Am. Beverley Hills, LLC*, 506 F.3d 832, 839–40 (9th Cir. 2007)).

As described above, Congress intended section 172(c)(9) to require contingency measures that achieve meaningful emissions reductions adequate to address shortfalls in achieving reasonable further progress or attaining the NAAQS, and thus the best reading of the statute mandates one year's worth of reasonable further progress. *See supra* Sections I.A–B. Yet EPA approved the District and CARB's infeasibility demonstration, condoning California's decision to adopt nothing more than three anemic measures that, at bottom, achieve nothing more than *de minimis* NOx emissions reductions. Even if this Court does not agree with Air Advocates' reading of section 172(c)(9), the Court should not allow EPA to interpret the Act in a manner that diminishes the statutory obligation to nothingness. *See Comm. for a Better Arvin*, 786 F.3d at 1178 (The Clean Air Act does not care about trifles.).

The three PM2.5 contingency measures provide a trifle of NOx emissions reductions. Calculated as a percentage of one year's worth of reasonable further progress—i.e., the emissions reduction benchmark EPA required states to meet for thirty years—EPA estimates that the contingency measures provide NOx emissions reductions equivalent to less than 2% of the benchmark for all three PM2.5 NAAQS. 1-ER-5 tbl.3, 89 Fed. Reg. at 80752 tbl.3. Even EPA's alternative, more generous estimates (i.e., with "trading" that credits certain PM2.5 emissions reductions as NOx reductions, *see supra* at 26 n.8) indicate that the three contingency measures achieve only 6.3%, 1.3%, and 6.3% of one year's worth of reasonable further progress for NOx for the 1997 Annual, 2006 24-Hour, and 2012 Annual PM2.5 Standards, respectively. 1-ER-5 tbl.3, 89 Fed. Reg. at 80752 tbl.3.[13]

Tables 2 and 3 in EPA's final rule summarize the paltry emissions reductions achieved by the three PM2.5 contingency measures:

[13] Even if EPA's new, more lenient benchmark of "one year's worth of progress" is applied, the contingency measures still only achieve only 15.8%, 8.9%, and 13.1% of the emissions reduction target for NOx for the 1997 Annual, 2006 24-Hour, and 2012 Annual PM2.5 Standards, respectively. 1-ER-5 tbl.3, 89 Fed. Reg. at 80752 tbl.3.

TABLE 2—REVISED ANNUAL AVERAGE EMISSION REDUCTIONS FROM DISTRICT AND CARB CONTINGENCY MEASURES
[tpd]

Contingency measure	1997 Annual $PM_{2.5}$ NAAQS		2006 24-Hour $PM_{2.5}$ NAAQS		2012 Annual $PM_{2.5}$ NAAQS	
	Direct $PM_{2.5}$	NO_X	Direct $PM_{2.5}$	NO_X	Direct $PM_{2.5}$	NO_X
District: Residential Wood Burning (first triggering event)	0.5793	0.0817	0.5793	0.0817	0.5793	0.0817
District: Non-agricultural Rural Open Areas	0.008	....	0.008	....	0.008	....
CARB: Smog Check (first triggering event)	....	0.117	....	0.120	....	0.086
Total	0.5873	0.1987	0.5873	0.2017	0.5873	0.1677

TABLE 3—REVISED EPA EVALUATION OF DISTRICT AND CARB CONTINGENCY MEASURES AS PERCENTAGE OF ONE YEAR'S WORTH OF RFP AND ONE YEAR'S WORTH OF PROGRESS

$PM_{2.5}$ NAAQS	Pollutant	One year's worth of RFP			One year's worth of progress		
		Reductions target	% OYW (no trading)	% OYW (with trading) [a]	Reductions target	% OYW (no trading)	% OYW (with trading) [a]
1997 Annual	Direct $PM_{2.5}$	0.44	132	100	0.41	142	100
	NO_X	16.7	1.2	6.3	7.9	2.5	[b] 15.8
2006 24-hour	Direct $PM_{2.5}$	0.58	101	100	0.52	112	100
	NO_X	18.4	1.1	1.3	6.7	3.0	[b] 8.9
2012 Annual	Direct $PM_{2.5}$	0.46	129	100	0.43	136	100
	NO_X	15.3	1.1	6.3	8.7	1.9	13.1

[a] The EPA has calculated % OYW (With Trading) for NO_X based on the 6:1 ratio presented in the SJV $PM_{2.5}$ Contingency Measure SIP.

1-ER-5 tbls.2 & 3, 89 Fed. Reg. at 80752 tbls.2 & 3.

As another point of comparison, the emissions reductions achieved by the three PM2.5 contingency measures are similar to emissions reductions that EPA, in proceedings before this Court, insisted were *de minimis*. In *Committee for a Better Arvin*, community groups challenged EPA's decision *not* to approve two California rules for inclusion in the attainment plan for the 1997 Annual PM2.5 Standard for the Valley, which would have made the rules federally enforceable. *See* 786 F.3d at 1177–78. EPA insisted the two rules were properly omitted because "it determined that [the rules] produced only *de minimis* emission reductions and so did not affect EPA's overall attainment and reasonable further progress evaluations." *Id.* at 1178. Accepting EPA's view that the rules only provided "trifling emission control measures," this Court upheld its decision. *Id*. The two rules at issue in *Committee for a Better Arvin*—known as the Diesel Particulate Matter Rule and Solid Waste Vehicle Collection Rule, *see id.*—were estimated to collectively reduce 2.48 tons per day of NOx statewide, with EPA assuming that less than 25% of those reductions (0.62 tons per day) occurred in the Valley.[14] Similarly here, EPA has estimated that the three PM2.5 contingency measures together will only reduce between 0.1677 and 0.2017 tons per day of NOx for the three NAAQS. 1-ER-5 tbl.2, 89 Fed. Reg. at 80752 tbl.2.[15] Such *de minimis* reductions simply do not fulfill section 172(c)(9)'s requirement to adopt contingency measures.

[14] EPA described the statewide emissions reductions from the Diesel Particulate Matter Rule as 0.1 tons per day of PM2.5 and 0.18 tons per day of NOx and noted its assumption that less than 25% of the reductions were attributable to the Valley. 76 Fed. Reg. at 69908/2. EPA described the statewide emissions reductions from the Solid Waste Vehicle Collection Rule as 0.17 tons per day of PM2.5 and 2.3 tons per day of NOx and likewise assumed less than 25% of the reductions were attributable to the Valley. *Id*.

[15] EPA also estimates that the three contingency measures will reduce 0.5873 tons per day of direct PM2.5. 1-ER-5 tbl.2, 89 Fed. Reg. at 80752 tbl.2. In some of its calculations, EPA credited (or "traded") some of these direct PM2.5 reductions toward achieving NOx benchmarks, but none of EPA's "trading" figures are denominated in terms of NOx tons per day reduced. *See* 2-ER-129–31, 88 Fed. Reg. at 88003–05; 1-ER-5, 89 Fed. Reg. at 80752.

III. EPA unlawfully and arbitrarily approved contingency measures that will become deficient after one triggering event.

As described above, the Residential Wood Burning, Rural Open Areas, and Smog Check Contingency Measures collectively serve three PM2.5 NAAQS, with all three of the measures providing emissions reductions for one triggering event. 1-ER-11–12, 89 Fed. Reg. at 80758–59. Although section 172(c)(9), 42 U.S.C. § 7502(c)(9), requires contingency measures to "be included in the [SIP]" and ready "to take effect . . . without further action by the State or the Administrator," EPA unlawfully and arbitrarily approved the Valley's contingency measures knowing they do not meet these statutory requirements for a second triggering event.[16]

Among the three PM2.5 contingency measures, two of them (Residential Wood Burning and Smog Check) are designed to institute emissions reductions upon the occurrence of a first and second triggering event. 2-ER-129, 88 Fed. Reg. at 88003/1. The third contingency measure (Rural Open Areas) provides for only one triggering event. *Id.* at n.118. But the second-level reductions provided by Residential Wood Burning are much less than the reductions achieved upon a first triggering event, leading EPA to conclude that "a SIP deficiency would arise upon

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[16] Pursuant to section 172(c)(9), a finding that an area "fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date" both trigger imposition of contingency measures. 42 U.S.C. § 7502(c)(9). EPA also treats a state's failure "to meet any quantitative milestone in an attainment plan" or a failure "to submit a quantitative milestone report" as a triggering event. 1-ER-12, 89 Fed. Reg. at 80759; 40 C.F.R. § 51.1014(a).

the first triggering event notwithstanding the existence of the built-in provisions for further reductions upon a second triggering event." 1-ER-12, 89 Fed. Reg. at 80759/2.

This is not a theoretical concern, as there is a very real possibility that at least one triggering event—resulting in an admitted SIP deficiency—will occur in 2025. EPA set December 31, 2024, as the attainment date for both the 1997 Annual and 2006 24-Hour PM2.5 Standards, and EPA must make its respective attainment determinations for these standards as expeditiously as practicable but no later than June 30, 2025. 89 Fed. Reg. at 91268/2; 3-ER-371, 85 Fed. Reg. at 44205; 42 U.S.C. § 7509(c).[17]

EPA's approval of the three contingency measures—knowing that there is a possibility if not a likelihood that they will be rendered deficient within less than the span of a year—is unlawful and arbitrary. Section 172(c)(9), 42 U.S.C. § 7502(c)(9), requires adequate contingency measures to be set forth in the SIP and poised for immediate implementation without any further action by the state or the EPA Administrator. Upon the occurrence of a single triggering event, California's

[17] In addition, the 1997 8-hour ozone standard has a June 15, 2024 attainment date in the Valley. 77 Fed. Reg. 12652, 12663 n.30, 12670 (Mar. 1, 2012). The Smog Check Contingency Measure serves a total of six NAAQS in the Valley, including the 1997 8-hour ozone standard. 2-ER-106, 112 tbl.2, 88 Fed. Reg. 87981, 87987 tbl.2 (Dec. 20, 2023). EPA must make an attainment determination for this standard no later than December 15, 2024, and has, to date, not made a determination. 42 U.S.C. § 7509(c).

measures for the Valley will no longer comply with this statutory requirement. Further, EPA's approval of the contingency measures in the face of a known deficiency is arbitrary. *See, e.g., AIR I*, 686 F.3d at 677 (ruling it was arbitrary and capricious for EPA to approve a SIP in the face of evidence indicating it was substantially inadequate); *cf. Portland Cement Ass'n v. EPA*, 665 F.3d 177, 187 (D.C. Cir. 2011) (ruling it was arbitrary and capricious for EPA to base a decision on a premise the agency knew would be "disrupt[ed]").

According to EPA, if a triggering event occurs and the deficiency manifests, it "expect[s] that CARB and the District would adopt and submit a SIP revision within one year of the triggering event to demonstrate that the SIP continues to meet contingency measure requirements." 1-ER-12, 89 Fed. Reg. at 80759/2. EPA's optimism notwithstanding, it "acknowledge[s] that neither the State nor District has submitted an enforceable commitment to submit additional contingency measures in response to the triggering of the contingency measures." 1-ER-12, 89 Fed. Reg. at 80759/1. This admission that the sufficiency of California's SIP for the Valley depends on an expectation of further unenforceable action underscores another reason that EPA's approval is unlawful and arbitrary: the Act requires that all SIP measures must actually be included in the SIP to ensure that they are fully enforceable as a condition of approval, a requirement that

EPA's approval of the three PM2.5 contingency measures does not fulfill. *See Comm. for a Better Arvin*, 786 F.3d at 1175 (citing 42 U.S.C. § 7410(a)(2)(A)).

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, the Court should grant this Petition, remand EPA's approval of the PM2.5 contingency measures, and award Air Advocates their costs of litigation, including reasonable attorneys' fees, pursuant to section 307(f) of the Act, 42 U.S.C. § 7607(f).

Respectfully submitted this 4th day of April, 2025.

LAW OFFICE OF BRENT J. NEWELL

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EARTHJUSTICE

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 24-7270

I am the attorney or self-represented party.

This brief contains 13,313 **words,** including 207 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

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[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/ Brent J. Newell **Date** April 4, 2025
(use "s/[typed name]" to sign electronically-filed documents)

No. 24-7270

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

COMMITTEE FOR A BETTER ARVIN, *et al.*,

Petitioners,

v.

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

Respondents,

and

CALIFORNIA AIR RESOURCES BOARD, *et al.*,

Respondents-Intervenors.

Petition for Review of Final Action of the U.S. Environmental Protection Agency

STANDING DECLARATIONS IN SUPPORT OF PETITIONERS' OPENING BRIEF

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Attorneys for Petitioners

For the reasons set forth in Petitioners' Unopposed Motion for Leave to File Standing Declarations, filed contemporaneously with Petitioners' Opening Brief, Petitioners Committee for a Better Arvin *et al.* herewith attach the sworn declarations of:

Tab 1	Veronica Aguirre
Tab 2	Estela Escoto
Tab 3	William Fjelbo
Tab 4	Kevin Hamilton
Tab 5	Vincent Hoenigman
Tab 6	Gordon Nipp
Tab 7	Mark Rose

Tab 1

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COMMITTEE FOR A BETTER ARVIN, *et al.* Petitioners, vs. U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*, Respondents,	**No. 24-7270** Agency No. EPA-R09-OAR-2023-0477 Environmental Protection Agency
CALIFORNIA AIR RESOURCES BOARD and SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT. Respondent-Intervenors.	

DECLARATION OF VERONICA AGUIRRE

I, VERONICA AGUIRRE, do hereby declare as follows:

1. I am over 18 years old and not a party to this action. I make this declaration of my own personal knowledge.

2. I am the Co-Chair of the Board of Directors for Healthy Environment for All Lives (HEAL), an unincorporated association based in Avenal, California.

3. HEAL's mission is to advocate for transformational social change to bring environmental, climate, educational, and economic justice to marginalized communities on the westside of the San Joaquin Valley. As part of its environmental justice work, HEAL advocates for reducing air pollution.

4. Advocating for better air quality in Avenal starts with HEAL's effort to reduce the impacts from the Avenal landfill. HEAL also advocates for improved air quality through collective action at the San Joaquin Valley Unified Air Pollution Control District and at the California Air Resources Board through our membership in the Central Valley Air Quality Coalition. We believe that by working together with other organizations, we can improve air quality in the San Joaquin Valley and Avenal.

5. I live in Avenal and I have lived in Avenal for over 50 years. My family has been in Avenal since the 1950s. I currently live with my husband and my two daughters, while my adult son no longer lives in Avenal.

6. The San Joaquin Valley suffers from some of the worst air pollution in the country, exceeding several health-based air quality standards. For example, on information and belief, I understand that the Valley has been designated as a serious nonattainment area for the 1997 annual fine particulate matter (PM2.5) National Ambient Air Quality Standard ("standard"). On information and belief, I am also aware that the San Joaquin Valley has been designated as a serious

nonattainment area for the 2006 24-hour PM2.5 standard and the 2012 annual PM2.5 standard.

7. I have asthma and my two daughters have asthma. My son had asthma while living in Avenal. Because of our asthma, I am extremely concerned about the health effects of PM2.5 and ozone—another air pollutant that plagues the San Joaquin Valley—on not only my own health, but on the health of my children. I am well aware of the damage PM2.5 inflicts on our health and our lungs, as well as how it damages lung tissue, exacerbates asthma, and can even lead to premature death. When the levels of PM2.5 or ozone or both are high, my asthma and my children's asthma become more severe and we have to use our inhalers more frequently.

8. I enjoy walking and hiking to stay healthy and for recreation. But when the air is bad in the winter from PM2.5 pollution, my family and I avoid going outside. This really bothers me because I want to get exercise and be healthy.

9. My backyard has a view of Black Mountain, part of the Diablo Range, which I really enjoy. The view makes me feel good and I really enjoy it. It also reminds me of the adventures I had on Black Mountain when I was younger. But at times the PM2.5 and ozone pollution is so bad that it obscures the view of Black Mountain, and it reminds me of how dirty and polluted our air remains. This makes

me upset and frustrated because all this pollution harms me and my family and takes away the beauty of our community.

10. I am serving as a declarant in this proceeding to support HEAL's efforts to enforce the laws that protect the health and welfare of my family and community.

11. I am aware that the San Joaquin Valley has a history of failing to attain National Ambient Air Quality Standards by the dates required by the Clean Air Act, including standards for PM2.5.

12. I am concerned that EPA and other responsible authorities are neglecting the requirements of the Clean Air Act and failing to institute sufficient requirements to timely achieve pollution reductions and attain PM2.5 and ozone standards, including meaningful contingency measures.

13. I believe that the additional reductions from attainment contingency measures that would take effect upon the failure of the San Joaquin Valley to attain one or more PM2.5 standards would help my community and my family. I strongly believe that EPA should follow the law and insist that the San Joaquin Valley Unified Air Pollution Control District and the California Air Resources Board develop, adopt, and submit attainment contingency measures that fully comply with the Clean Air Act.

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

Executed this 21st day of March, 2025 in Avenal, California.

Veronica Aguirre

Tab 2

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COMMITTEE FOR A BETTER ARVIN, *et al*. Petitioners, vs. U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*, Respondents, CALIFORNIA AIR RESOURCES BOARD and SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT. Respondent-Intervenors.	**No. 24-7270** Agency No. EPA-R09-OAR-2023-0477 Environmental Protection Agency

DECLARATION OF ESTELA ESCOTO

I, ESTELA ESCOTO, do hereby declare as follows:

1. I am over 18 years old and not a party to this action. I make this declaration of my own personal knowledge.

2. I currently reside in Arvin, California. Arvin is located in the San Joaquin Valley air basin. I have lived in Arvin for over 18 years.

3. I am the President of the Committee for a Better Arvin (CBA), a California 501(c)(3) non-profit organization, located in Arvin, California. I have been a member of CBA since 2008.

4. CBA's mission is to improve the quality of life in Arvin, inform and unite the community, address problems facing the community, and secure equality for all Arvin residents.

5. Enforcing the Clean Air Act is in line with CBA's mission because Arvin has some of the worst air pollution in the San Joaquin Valley and in the United States. Improving air quality would drastically improve the quality of life and the health of Arvin residents.

6. CBA is a membership organization, and any resident of Arvin can become a member by attending three consecutive meetings and receiving approval from a majority of CBA's members. Decisions on behalf of CBA are made through a majority vote at meetings.

7. The San Joaquin Valley suffers from some of the worst air pollution in the country, exceeding several health-based air quality standards. For example, on information and belief, I understand that the Valley has been designated as a serious nonattainment area for the 1997 annual fine particulate matter (PM2.5) National Ambient Air Quality Standard ("standard"). On information and belief, I

am also aware that the San Joaquin Valley is a serious nonattainment area for the 2006 24-hour PM2.5 standard and the 2012 annual PM2.5 standard.

8. CBA has pursued advocacy and litigation to ensure that Clean Air Act requirements are enforced. For example, in 2018 and 2021, CBA participated as a plaintiff in separate lawsuits to compel the U.S. Environmental Protection Agency (EPA) to take overdue actions required to address PM2.5 in the San Joaquin Valley. (*Committee for a Better Arvin et al. v. EPA*, N.D. Cal. case no. 3:18-cv-05700; *Comité Progreso de Lamont et al. v. EPA*, N.D. Cal. case no 3:21-cv-08733.) CBA was also a plaintiff in a lawsuit to compel the California Air Resources Board to adopt contingency measures for the 2008 8-hour ozone standard in the San Joaquin Valley. (*Central California Environmental Justice Network et al. v. Randolph*, E.D. Cal. case no 2:22-cv-01714-DJC-CKD.) More recently, CBA submitted comments to EPA on its proposal to approve inadequate contingency measures to address PM2.5 pollution.

9. I understand that PM2.5 pollution damages lung tissue, exacerbates asthma, reduces lung capacity, increases respiratory and cardiovascular hospital admissions, increases school and work absenteeism, and causes premature mortality.

10. I am concerned about the health effects of PM2.5 pollution on my health, the health of my family, and the health of my friends and neighbors.

11. When PM2.5 levels are high, especially in the winter months, the polluted air makes breathing difficult. I get very bad coughs as a result of the air feeling thick and difficult to breathe. For that reason, I will stay home and use an air purifier to allow me to breathe easier.

12. I am worried about my husband's health and his ability to work to provide for our family. He suffers from breathing difficulties when PM2.5 levels are bad. I am worried that he might not be able to work because of how the air pollution affects him.

13. When the air quality is good, I enjoy the view of the mountains near Arvin. I believe the mountains help to make our community more beautiful. I am upset that, on many days in the winter and the summer, the PM2.5 and ozone air pollution form a grayish fog that blocks the view of the mountains, and I am reminded about the pollution in the air.

14. I am aware that the San Joaquin Valley has a history of failing to attain National Ambient Air Quality Standards by the dates required by the Clean Air Act.

15. I am concerned that EPA and other responsible authorities are neglecting the requirements of the Clean Air Act and failing to institute sufficient requirements to timely achieve pollution reductions and attain PM2.5 and ozone standards, including meaningful contingency measures.

16. We have an environmental justice and health crisis in Arvin. I am serving as a declarant in this proceeding to support CBA's efforts to enforce the laws that protect the health and welfare of my family and my community.

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

Executed this 1st day of April, 2025 in Arvin, California.

Estela Escoto

Tab 3

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COMMITTEE FOR A BETTER ARVIN, *et al.* Petitioners, vs. U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*, Respondents, CALIFORNIA AIR RESOURCES BOARD and SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT. Respondent-Intervenors.	**No. 24-7270** Agency No. EPA-R09-OAR-2023-0477 Environmental Protection Agency

DECLARATION OF WILLIAM FJELLBO

I, WILLIAM FJELLBO, declare as follows:

1. I am over 18 years old and not a party to this action. I make this declaration of my own personal knowledge.

2. I am a paying member of National Parks Conservation Association (NPCA) and have been since 2015.

3. I am a resident of Coarsegold, California, where I have lived with my wife Janet since 1992.

4. I work as a general practice attorney based out of my home in Coarsegold and travel frequently throughout the San Joaquin Valley and central Sierra Nevada region for my work.

5. I am also heavily involved in environmental advocacy as a member of several environmental groups, such as the Sierra Club, where I currently serve as political committee chair of the Sierra Club's Tehipite Chapter headquartered in Fresno and have previously served as chair and vice-chair.

6. As a resident of Madera County in the foothills of the Sierra Nevada Mountains, I live within the boundaries of the San Joaquin Valley Air Pollution Control District and regularly experience poor air quality both at home and when I travel locally. Because of these experiences, as well as my extensive work on local environmental issues, I am aware of the significant air pollution issues in my community, including the fine particulate matter (PM2.5) air pollution issues affecting the San Joaquin Valley and nearby national parks.

7. On information and belief, I understand that the San Joaquin Valley has been designated as a serious nonattainment area for the 1997 annual PM2.5 National Ambient Air Quality Standard ("standard"). On information and belief, I

am also aware that the San Joaquin Valley is a serious nonattainment area for the 2006 24-hour PM2.5 standard and the 2012 annual PM2.5 standard.

8. I understand that studies show PM2.5 pollution causes adverse health effects. For example, on information and belief, I understand that PM2.5 pollution damages lung tissue, exacerbates asthma, reduces lung capacity, increases respiratory and cardiovascular hospital admissions, increases school and work absenteeism, and causes premature mortality.

9. I am personally concerned about the harm that excess PM2.5 pollution could have on my health and that of my wife, who is subject to frequent sinus infections that are worsened by particulate air pollution. There are days when my wife and I choose not to leave the house because of concerns about air pollution, which has been compounded by increased wildfires in the region. I am also concerned with the impact that PM2.5 pollution is having on other individuals in my community, especially younger residents, because of how it causes or exacerbates various health problems, like asthma.

10. Living roughly a half an hour from the southern entrance of Yosemite, for many years now my wife and I have visited the park every two months or so and we plan to continue doing so for the foreseeable future. I also have visited both Sequoia and Kings Canyon National Parks about every two to three years, with my

most recent visit occurring in early January of 2021. I plan to continue visiting Sequoia and Kings Canyon on a regular basis every few years into the future.

11. On information and belief, I understand that, in addition to harmful health consequences, PM2.5 pollution is recognized as a main cause of reduced visibility (haze) in certain areas of the country, including many national parks and wilderness areas.

12. During my frequent visits to Yosemite, I often experience bad air quality in the form of haze that significantly impacts my views of scenery in the distance. I can remember many occasions in which I experienced hazy skies in places like Yosemite Valley. This frequent haze is extremely depressing and is not what anyone should expect when visiting a national park. Moreover, there are times of the year when my wife and I will not visit Yosemite or will alter which days we choose to visit because of air pollution concerns. This is also true for visiting Sequoia and Kings Canyon National Parks, which I understand have even worse overall air quality than Yosemite.

13. In addition to my visibility and health concerns regarding air quality in the Sierra Nevada national parks, I am also concerned with the impacts that PM2.5 pollution and other pollutants that go on to form PM2.5, like NOx, have on local ecosystems. I have read about the effects that air pollution has on plant life, including giant sequoias, and am greatly saddened by such impacts. I also live on a

small lake that frequently experiences severe algae blooms due to excess nitrogen from sources like nitrogen oxides (NOx) pollution. Knowing how harmful these algae blooms are to the lake I live on, it is extremely worrisome to know that similar impacts are occurring in high altitude lakes in the Sierra Nevada mountains, far from the sources of nitrogen pollution.

14. Through my environmental advocacy work I have come to understand that state agencies like the California Air Resources Board and San Joaquin Valley Air Pollution Control District are required to develop and submit plans to EPA that address pollutants like PM2.5 and follow planning deadlines set under the Clean Air Act.

15. I am aware that the San Joaquin Valley has a history of failing to abide by planning deadlines, failing to adopt legally sufficient plans, and failing to attain PM2.5 standards by the dates required by the Clean Air Act.

16. I am concerned that EPA and other responsible authorities are neglecting the requirements of the Clean Air Act and failing to institute sufficient requirements to timely achieve pollution reductions and attain PM2.5 standards, including meaningful contingency measures.

17. I do not believe EPA met the requirements under the Clean Air Act to institute meaningful contingency measures to address PM2.5 pollution, and thus I strongly support this litigation by NPCA to help clean up the air in my community

and national parks and ensure that the San Joaquin Valley comes into attainment with federal PM2.5 standards.

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

Executed on this 28th day of March, 2025 in Coarsegold, California.

William Fjellbo

Tab 4

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COMMITTEE FOR A BETTER ARVIN, *et al.* Petitioners, vs. U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*, Respondents,	**No. 24-7270** Agency No. EPA-R09-OAR-2023-0477 Environmental Protection Agency
CALIFORNIA AIR RESOURCES BOARD and SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT. Respondent-Intervenors.	

DECLARATION OF KEVIN HAMILTON

I, KEVIN HAMILTON, do hereby declare as follows:

1. I am over 18 years old and not a party to this action. I make this declaration of my own personal knowledge.

2. I currently reside in Fresno, California. Fresno is located within the San Joaquin Valley air basin and within the jurisdiction of the San Joaquin Valley Air Pollution Control District.

3. I have been a Registered Respiratory Therapist for 42 years as well as an Asthma Clinical Specialist for 28.

4. I am a founding member of the Medical Advocates for Healthy Air ("Medical Advocates"). Formed in 2001, Medical Advocates is a California non-profit organization based in Fresno consisting of medical professionals living in the San Joaquin Valley who regularly treat patients suffering from respiratory ailments that are caused or greatly exacerbated by the Valley's unhealthy levels of air pollution. Its mission is to advocate for the expeditious attainment of state and federal health-based air quality standards in the San Joaquin Valley through public education, litigation, and other means.

5. I was the Founder, Executive Director, and Senior Director of Government Affairs for Central California Asthma Collaborative ("CCAC"), a non-profit organization with offices in Kern and Fresno California. CCAC is dedicated to providing education and direct services, building regional capacity, and advocating for sensible policies that improve health through the prevention and management of chronic disease. I have retired from my previous roles at CCAC but I continue to work as a consultant to CCAC as a respiratory therapist to treat patients and as a policy advocate.

6. I am also the former Medical Program Coordinator for both California Asthma Among the School Aged ("CAASA") and the Together for Asthma

Control ("TAC") Project. CAASA, a University of California San Francisco School of Public Health funded project, provided both in-home and medical management to children with asthma and their families including assessing the economic impact of asthma to the community. TAC was an American Lung Association project that worked with various clinics throughout Fresno County to help families with asthmatic children aged five and under to better care for their children. Both CAASA and TAC are innovative programs for providing best practice modeling of asthma care for underserved children and their families. As the Medical Program Coordinator, I was responsible for training physicians, case managers, and other primary care providers in change management using the continuous quality improvement model.

7. For sixteen years, I worked as the Program Coordinator for the Asthma Education and Management Program at Community Medical Centers in Fresno. There, I developed then administered the program and coordinated its activities with other organizations with similar goals to improve public health in the five California counties of Fresno, Madera, Tulare, Kings, and Kern. I also consulted with five county health agencies to help them address the respiratory health needs of their populations and participated in the creation of the first California Asthma Strategic Plan as well as its 2004 update.

8. I am a member of the Fresno/Madera Regional Asthma Coalition, a

coalition that aims to educate the public on air quality issues. Its goals are to provide health education and management assistance to patients and health care providers with regard to asthma and various pulmonary-related chronic diseases; to improve the health of the community at large by actively participating in and sponsoring health education-related events and community-based classes; to track and report on outcomes of all interventions; and to provide ongoing follow-up to all patients of the program at regular intervals. The Fresno/Madera Regional Asthma Coalition is one of the three original asthma coalitions (Fresno, New York, and Chicago) established under National Institute of Health charter in 1997. I have served as both chair and vice-chair of the Fresno County Regional Asthma Coalition.

9. In 1994, I developed the UCSF Resident Training Lecture series focusing on the special needs of patients suffering from chronic pulmonary disease. I was also a guest instructor on respiratory related disease for the University of California at Davis's Nurse Practitioner Training Program from 1996-2001. In 1996, I developed and initiated the "Asthma Education and Management Program in the Primary Care Setting" Program as part of the Pediatrics and Family Practice Medicine programs at the University Medical Center.

10. I have co-published six papers on asthma in various journals, magazines, and newsletters, including the Journal of the American Medical Association. I published an article in the American Journal of Public Health regarding asthma education.

11. In 2000, I was awarded the American Lung Association Award, their highest honor for outstanding participation in the fight against lung disease. In 2006, I was the first non-physician to receive the Physicians for Social Responsibility award for the Practice of Socially Responsible Medicine. In 2013, I was awarded the Community Hero Award by the College of Health and Human Sciences at California State University Fresno for my work on air pollution, asthma, environmental justice, and the environment.

12. I am invited by various groups and organizations approximately 10-15 times per year to present lectures on the effects of pollution on health. I have delivered lectures to senior groups, children's groups, and other community groups to educate them on air quality and the health impacts of air pollution.

13. Medical Advocates has been a petitioner or plaintiff in several lawsuits relating to air pollution in the San Joaquin Valley, including PM2.5 pollution. For example, Medical Advocates achieved successful outcomes in *Medical Advocates for Healthy Air et al. v. EPA*, No. 20-72780, 2022 WL 1109656 (9th Cir. April 13, 2022) (improper EPA approval of 2006 24-hour PM2.5 plan);

Comité Progreso de Lamont et al. v. EPA, N.D. Cal. No. 3:21-cv-8733-WHA (EPA failure to take final action on PM2.5 plans, resolved by consent decree); *Committee for a Better Arvin et al. v. EPA*, N.D. Cal. No. 18-cv-05700-RS (EPA failure to make findings that Valley PM2.5 plans were overdue).

14. I live, raise my family, work (including treating patients suffering from air pollution-related health effects), recreate, and conduct educational, research, advocacy, and other activities in the San Joaquin Valley and have done so for the past thirty-eight years. I am harmed by exposure to high levels of PM2.5 pollution. The adverse effects of such pollution, as I describe below, include actual or threatened harm to my health, my family's health, my patients' health, my professional, educational, and economic interests, and my aesthetic enjoyment of the environment in the San Joaquin Valley.

15. I am concerned about air quality, especially PM2.5 and ozone pollution, for many reasons, both personal and professional. As a health professional, I have participated in extensive research on air pollution in the San Joaquin Valley and the serious health effects associated with chronic exposure to polluted air including the UC Berkeley, UCSF and CCAC's Children's Health and Air Pollution Study (CHAPS) which is now in its 8th year and is and has clearly illustrated the impact of PM2.5 and ozone air pollution in the Central Valley on developing children both in utero to 16 years of age.

16. The effects of PM2.5 and ozone pollution on health include but are not limited to coughing and breathing impairment, chronic bronchitis, exacerbation of asthma and other respiratory diseases, decreased lung function, and premature death.

17. I am concerned about the debilitating and potentially fatal effects of PM2.5 and ozone pollution on both the most sensitive groups and the general public. According to the California Air Resources Board, the term "sensitive groups" means the elderly and specifically elderly women and people with pre-existing conditions such as diabetes, heart disease, and lung disease including asthma. It should be noted for the record that these so-called "sensitive groups" make up 62% of Fresno County's population and almost 50% of the entire Valley population.

18. I am also concerned about the economic costs to Valley residents who pay a high price each year in medical bills, lost economic growth due to missing work and educational opportunities due to missing school, suffering, and premature death.

19. Because of the debilitating and chronic effects of air pollution, I have worked with the Fresno Unified School District to create the first ever Air Quality Advisory position to advise the District and its Calendar Committee charged with re-organizing schools' schedules to minimize children's exposure to air pollutants.

Since then, the CCAC team has worked successfully with over 1500 schools in the San Joaquin Valley to ensure they have access to the local air district's Real Time Air Advisory Network (RAAN). Many of those schools have added that information to their school's internet home page and encouraged parents to check it regularly so they can make informed decisions about whether outside activities are appropriate. Parents and teachers plan outside activities with RAAN to make sure it is safe to breathe outside that day.

20. Before I moved to Fresno, I was an avid runner. I used to run 3 to 4 miles per day and was in very good physical condition. However, when I started running after moving to Fresno, I found myself feeling short of breath after just one mile. Often, I would discover that PM2.5 were very high on the days I struggled to breathe. I would also see that the newspapers published warnings of high PM2.5 levels for those days. Sometimes I would hear the radio announcing a "Spare the Air" advisory, warning people not to exercise outside. Within a few months, the high levels of pollution in the air forced me to stop running. It is very upsetting to me that I am unable to exercise outdoors without jeopardizing my health.

21. My wife and two daughters have suffered from respiratory problems since we moved to Fresno, which distresses me very much. My oldest daughter, who is now forty-six, did not have any respiratory problems until the fall after we

moved to Fresno. She had her first asthma attack at nine years old, which I knew from my work to be unusual; most cases of asthma come on when children are zero to six years old and 70-80% go into remission by age 7. Her asthma problems require her to follow a regimen of steroid inhalers every day. She tried to stop taking them a couple times, but she starts to cough, and it impedes her ability to do her normal daily activities. Five years ago, she and her family moved to Dayton, Nevada hoping to get some relief from this problem. While it was of some help to her daughter (my granddaughter), doctors have determined that my daughter's chronic asthma here in the Valley has left her with chronic lung disease related to scarring from multiple attacks over the years.

22. My younger daughter, who is now thirty-six, began to suffer from allergies when she turned six. Her allergies worsen on days when PM2.5 levels are high, and she must use an inhaler. She loves to play soccer and ride her bicycle instead of driving her car but when air pollution is bad, she has to stay inside or drive around with the air conditioning on, and windows closed. She also periodically gets migraine headaches on days when PM2.5 and ozone levels are high.

23. My wife also has asthma. She developed asthma three years after we moved here, and she has it worse than either of our daughters. She must use a high-powered steroid inhaler and a long-acting bronchodilator twice a day. Like our

younger daughter, she regularly gets migraines when PM2.5 pollution levels are high. She has been hospitalized twice because of her migraine problems. She is also an avid gardener, but for the past 21 years she has been upset about not being able to garden because of the high pollution levels.

24. I have three grandchildren who live in the Valley or lived here until relatively recently, and all suffer from respiratory problems. My youngest granddaughter is 15 years old and has suffered several respiratory events that required the use of an inhaler to help her breathe.

25. My grandson, who is 23 years old, suffered asthma symptoms almost since birth until he joined the Army and moved to Washington State a few years ago where his asthma has apparently gone into remission. While growing up in the Valley, he had to miss at least a day or two of school every month, which required my daughter to put her employment in jeopardy to stay home with him.

26. My 22-year-old granddaughter's asthma has now become more severe, and she still must use a steroid inhaler all year. Her asthma has caused her to miss many days of work and college and to be taken to the ER multiple times. This has significantly affected the quality of life of my daughter's family, forcing them to curtail their camping activities and other outdoor recreation in the Valley. When they leave the Valley for recreation, however, the children have no breathing problems and do not need any medication, steroid or otherwise.

27. Neither my daughters nor my wife must use their inhalers when we travel outside of the San Joaquin Valley. We go to Ohio for one month every other year, and when we are there, they do not have to use inhalers at all. We also spend a week or two on the northern California coast or in the mountains, and by the third day of the trip they are all medication free. I have several friends in the area who similarly are able to breathe better and reduce their dependence on medications when they leave the San Joaquin Valley.

28. Watching my wife, children, and grandchildren suffer from the effects of air pollution is very distressing to me, especially since I know they would not suffer so much if we lived somewhere that had cleaner air.

29. My entire family and I are very concerned about the current pollution problems in the San Joaquin Valley, particularly because they do not appear to be improving. In my work, I counsel people with severe respiratory problems who have the resources to move out of Fresno if possible. For those with limited resources, this is not an option. I do not move because I am professionally committed to this area and its public health and am actively working to correct the problem rather than run away.

30. Friends and patients tell me that you used to be able to see the mountain ranges on both sides of the Valley—the Sierra Nevada to the east, and the Coastal Range to the west—every day. Now, because of the thick PM2.5 haze

and ozone that blankets the San Joaquin Valley in the winter and summer, respectively, I cannot remember the last time I saw the Coastal Range, which is 45 miles away. The Sierra Nevada's are only sixteen miles away, and I can only see those mountains less than one-third of the days in the year.

31. When I leave the San Joaquin Valley, I can really see how bad the air is. When I drive to Los Angeles, I go over the Tehachapi Mountain Range. When I look back and see a brown or gray haze, it saddens me. When I come home from the coast, I feel similarly depressed realizing that I'm diving back down into the brown or gray air hanging over the San Joaquin Valley. The brown smog that forms when ozone concentrations are high creates a pollution ceiling above the Valley floor. Similarly, a gray haze forms in the Valley's air when PM2.5 levels are high in the winter. I find the brown and gray layers of pollution that cloak Fresno depressing and they detract from my enjoyment of the Valley, especially when I am doing an outdoor activity.

32. The health and social impacts caused by high levels of air pollution place a financial burden on my family and me. Each month I make co-payments of approximately $400 for my family's medications. I also believe that air pollution adversely affects property values in the Valley including the value of my residence. I believe the poor air quality in the San Joaquin Valley has prevented real estate including my own house in Fresno from appreciating to its full potential.

33. As my family and I know all too well, the San Joaquin Valley suffers from some of the worst air pollution in the country, exceeding several health-based air quality standards. For example, I am aware that the Valley has been designated as a serious nonattainment area for the 1997 PM2.5 National Ambient Air Quality Standard ("standard"). I am also aware that the San Joaquin Valley is a serious nonattainment area for the 2006 24-hour PM2.5 standard and the 2012 annual PM2.5 standard.

34. I am aware that the San Joaquin Valley has a history of failing to attain National Ambient Air Quality Standards by the dates required by the Clean Air Act.

35. I am concerned that EPA and other responsible authorities are neglecting the requirements of the Clean Air Act and failing to institute sufficient requirements to timely achieve pollution reductions and attain PM2.5 standards, including meaningful contingency measures.

36. I do not believe EPA has met the requirements under the Clean Air Act to institute meaningful contingency measures to address PM2.5 pollution. The requirements of the Clean Air Act should be fully implemented in the San Joaquin Valley to protect my health and the health of my family and patients.

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

Executed this 1st day of April, 2025 in Fresno, California.

Kevin Hamilton

Tab 5

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COMMITTEE FOR A BETTER ARVIN, *et al.* Petitioners, vs. U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*, Respondents, CALIFORNIA AIR RESOURCES BOARD and SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT. Respondent-Intervenors.	**No. 24-7270** Agency No. EPA-R09-OAR-2023-0477 Environmental Protection Agency

DECLARATION OF VINCENT HOENIGMAN

I, VINCENT HOENIGMAN, do hereby declare as follows:

1. I am over 18 years old and not a party to this action. I make this declaration of my own personal knowledge.

2. I am an active member of National Parks Conservation Association (NPCA) and have been for the last 28 years. I also currently serve on NPCA's National Board of Trustees as well as on NPCA's Pacific Regional Council.

3. I reside in San Francisco, where I have lived for approximately the last 35 years. I share my house with my wife, my son, and my daughter.

4. From childhood on I have been very susceptible to air pollution, experiencing shortness of breath and breathing problems that often have forced me to stay inside during particularly smoggy days. Into adulthood, this susceptibility has made me extremely cautious when it comes to exposing myself or my family to air pollution. For instance, whenever forest fires impact air quality in San Francisco and near our home on Lake Tahoe, I have refrained from exercising outdoors for fear of breathing in high amounts of fine particulate matter (PM2.5) air pollution. I am also worried that my susceptibility to air pollution could be passed down onto my children, and fear for their health during particularly smoggy days.

5. I know from sources I have read that breathing in PM2.5 air pollution is a severe health risk and can exacerbate or lead to issues like asthma and lung disease. I am also aware that elevated PM2.5 air pollution from the San Joaquin Valley often makes its way into the Sierra Nevada mountains, where it harms overall air quality in national parks like Yosemite, Sequoia, and Kings Canyon.

6. I have been an avid lover of nature and our national parks since childhood and have spent much of my adult life working to see that these resources are protected and preserved. I can remember the first time I visited Yosemite

around the age of 10, and the impression it left on me continues in my work with NPCA to this day. Since then, I have visited Yosemite over 15 times. I have also visited Sequoia National Park roughly 3 times, and Kings Canyon National Park roughly twice. I generally visit one of these parks every 2 to 3 years and definitely plan to visit them again in the near future.

7. Given my longstanding love of our national parks, I was troubled to discover that the San Joaquin Valley, in which all or parts of Yosemite, Sequoia, and Kings Canyon National Parks are located, has yet to meet health-based PM2.5 standards set well over twenty years ago, in 1997, and that EPA has approved a plan by the State of California that I believe falls short of what is needed to reduce PM2.5 pollution in the region as required under the Clean Air Act.

8. With my own breathing problems and my concern for my family's health, I am extremely worried about air quality when I visit the Sierra Nevada national parks. I have experienced firsthand the smoggy skies in these 3 parks and am very worried about the impact it may have on my health and the health of my family when we visit. I fear PM2.5 pollution in the Sierra parks could exacerbate my existing health issues, causing me to cut short hikes, or change my plans for what activities I might choose to do while in the parks. I also foresee the possibility that PM2.5 pollution may change when or where I decide to visit these parks. For instance, I may avoid the parks entirely during times of the year when PM2.5

levels are elevated or choose to visit the eastern side of the Sierra as opposed to the western side.

9. The more that I have learned about this issue, the more I have become upset by the impact it has on my ability to enjoy the sights these parks have to offer. Seeing the extremely smoggy air in these parks is very disappointing and depressing. It is obvious that these parks are far more beautiful when the sky is clear, and you can see all the sights in the distance. I have memories of days when the mountains faded endlessly into the distance beneath clear, blue skies. Unfortunately, I also have memories from days when the nearest ridge is just a pale silhouette under hazy, white skies and the more distant peaks are completely obscured.

10. I am also concerned about published reports I have read discussing the impact particulate matter precursors, like nitrogen compounds, have on algae blooms in high altitude Sierra lakes. I have witnessed the impact that nitrogen deposition has had on water clarity in Tahoe and hate to think that the same thing is happening in what should be some of the most isolated and pristine lakes in the country.

11. For the reasons above, I fully support NPCA in their lawsuit to ensure that requirements of the Clean Air Act for controlling PM2.5 pollution are enforced.

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

Executed this 31st day of March, 2025 in San Francisco, California.

Vincent Hoenigman

Tab 6

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COMMITTEE FOR A BETTER ARVIN, *et al.* Petitioners, vs. U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*, Respondents,	**No. 24-7270** Agency No. EPA-R09-OAR-2023-0477 Environmental Protection Agency
CALIFORNIA AIR RESOURCES BOARD and SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT. Respondent-Intervenors.	

DECLARATION OF GORDON NIPP

I, GORDON NIPP, do hereby declare as follows:

1. I am over 18 years old and not a party to this action. I make this declaration of my own personal knowledge.

2. I live in Bakersfield, California. Bakersfield is located at the southern end of the San Joaquin Valley air basin. I have lived in this area for over 44 years.

3. I am 84 years old. I am a retired professor of mathematics at California State University, Los Angeles.

4. I am a member of the Sierra Club in good standing. I first became a member around 1971 and have been an active volunteer since.

5. I am the Vice-Chair of the Kern Kaweah Chapter of the Sierra Club. I have held this role for approximately 15 years. In that capacity and through my volunteer work I have become familiar with Sierra Club's organization, purpose, and membership structure.

6. The Sierra Club is a California nonprofit corporation with its headquarters in Oakland, California and members in all 50 states. The Sierra Club's mission is to protect and restore the environment, promote responsible use of resources, and educate the public. As a national organization dedicated to the protection of public health and the environment, including air quality, Sierra Club has members living in all eight counties comprising the San Joaquin Valley. The Sierra Club is a membership-based organization where Sierra Club members vote for the leaders in each Chapter and vote for each of the candidates for the Board of Directors.

7. The Sierra Club has actively participated in the development of Clean Air Act attainment plans for the San Joaquin Valley, including commenting on U.S. Environmental Protection Agency ("EPA") actions with respect to air quality

in the San Joaquin Valley. Sierra Club has also successfully challenged EPA actions for the San Joaquin Valley as unlawful on several occasions, including *Sierra Club v. EPA*, 671 F.3d 955 (9th Cir. 2012) (EPA approval of 1-hour ozone plan), and *Medical Advocates for Healthy Air v. EPA*, No. 20-72780, 2022 WL 1109656 (9th Cir. Apr. 13, 2022) (EPA approval of 2006 24-hour PM2.5 plan).

8. On information and belief, I understand that the San Joaquin Valley is a serious nonattainment area for the 1997 annual fine particulate matter (PM2.5) National Ambient Air Quality Standard ("standard"). On information and belief, I am also aware that the San Joaquin Valley is a serious nonattainment area for the 2006 24-hour PM2.5 standard and the 2012 annual PM2.5 standard. On information and belief, I am further aware that the San Joaquin Valley is an extreme nonattainment area for the 1997, 2008, and 2015 8-hour ozone standards.

9. I am concerned about the effects of PM2.5 and ozone pollution on my health, the health of my family, and the health of my friends and neighbors. I am especially concerned for my own health since I was diagnosed with asthma by a doctor over ten years ago.

10. I understand that PM2.5 pollution damages lung tissue, exacerbates asthma, reduces lung capacity, increases respiratory and cardiovascular hospital admissions, increases school and work absenteeism, and causes premature mortality. I also understand that ozone pollution causes shortness of breath, asthma

attacks, increased hospital and emergency room visits, and increased risk of premature death.

11. Poor air quality in the San Joaquin Valley impacts my day-to-day life. Because of my asthma, I have to take extra precautions.

12. I feel asthmatic symptoms in my chest and it is hard to breathe. I use an inhaler to treat my asthma. My frequency of inhaler use increases during the winter when PM2.5 levels are highest in the San Joaquin Valley and in summer when ozone levels in the Valley are highest.

13. I prefer to engage in outdoor activities three or four times per week, although sometimes this is not possible due to poor air quality. For example, I enjoy hiking at Hart Park and Lake Ming in Bakersfield, but I avoid hikes when the air quality is bad during the winter and summer.

14. I frequently check the local Air District's air quality data in the local newspaper and on the internet.

15. When either one of these indicates poor air quality, I try to stay inside as much as possible and avoid the dirty air.

16. Much of the time I am hesitant to go outside, engage in exercise, or leave my windows open because of poor air quality.

17. When the air quality is especially poor, I am extra cautious about closing doors and taking extra steps to keep the dirty air outside. My wife and I

also have several air filtration systems in the house that we run on poor air quality days.

18. I live on a hillside on the east side of Bakersfield, on View Street, and my house faces the Kern Canyon and the southern Sierra Nevada mountains. I very much enjoy the beautiful scenery of the mountains, but when the air quality is bad, air pollution obscures the views from my home. It makes me sad when I cannot enjoy the view of the mountains because of air pollution.

19. I am aware that the San Joaquin Valley has a history of failing to attain National Ambient Air Quality Standards by the dates required by the Clean Air Act. For example, the San Joaquin Valley failed to meet the attainment deadline for the 1997 annual PM2.5 standard, so it was reclassified from a "moderate" nonattainment area to "serious." EPA set December 31, 2015, as the attainment deadline for the San Joaquin Valley as a serious nonattainment area for the 1997 annual PM2.5 standard, but the Valley did not meet the deadline. EPA approved a one-year extension of the deadline to December 31, 2024, as requested by the California Air Resources Board, and EPA has still not made a finding that the Valley meets the 1997 PM2.5 standard.

20. I am also aware that the San Joaquin Valley has not met deadlines for attainment of the 2006 24-hour PM2.5 standard or the 1997 8-hour ozone standard. The attainment deadlines for the 2006 24-hour PM2.5 standard and the 1997 8-

hour ozone standard are December 31, 2024, and June 15, 2024, respectively. EPA has not made any finding with regard to whether the Valley met those standards on time. I am aware that design value data for those standards for the 2021-2023 period indicates the Valley does not attain those standards.

21. I am concerned that EPA and other responsible authorities are neglecting the requirements of the Clean Air Act and failing to institute sufficient requirements to timely achieve pollution reductions and attain PM2.5 and ozone standards, including meaningful contingency measures.

22. I am serving as a declarant in this proceeding to support Sierra Club's efforts to enforce the laws that protect my health, the health and welfare of my family and community, to oppose attempts to weaken clean air protections, and to protect and restore the natural beauty of the San Joaquin Valley.

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

Executed this 12th day of March, 2025 in Bakersfield, California.

Gordon L. Nipp

Gordon Nipp

Tab 7

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COMMITTEE FOR A BETTER ARVIN, *et al.* Petitioners, vs. U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*, Respondents,	**No. 24-7270** Agency No. EPA-R09-OAR-2023-0477 Environmental Protection Agency
CALIFORNIA AIR RESOURCES BOARD and SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT. Respondent-Intervenors.	

DECLARATION OF MARK ROSE

I, MARK ROSE, do hereby declare as follows:

1. I am over 18 years old and not a party to this action. I make this declaration of my own personal knowledge.

2. I currently reside in Sacramento, California.

3. I am the Sierra Nevada Program Manager for the National Parks Conservation Association (NPCA). I have worked at NPCA for over 7 years. In my

role, I oversee NPCA's campaign work to protect and preserve Yosemite, Sequoia, and Kings Canyon National Parks, as well as to fight threats to the parks that extend beyond their borders including from areas such as the San Joaquin Valley. Part of my job includes working with our membership department to track and engage NPCA local members near these three Sierra Nevada National Parks.

4. NPCA is a membership organization headquartered in Washington, DC, with a Pacific Regional Office located in Oakland, CA, and a Sierra Nevada Field Office located in Sacramento, CA. NPCA is recognized as a not-for-profit corporation under Section 501(c)(3) of the United States Internal Revenue Code.

5. NPCA currently has over 330,000 active (dues paying) members nationwide, and approximately 1,200,000 (non-dues paying) supporters. Additionally, as of March 2025, NPCA has approximately 39,000 active members in California and over 1,920 active members in the counties that make up the San Joaquin Valley Air Pollution Control District (Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare). NPCA's membership department carefully tracks active members and regularly updates their databases to reflect items such as current addresses and the membership status of active members versus lapsed-payment prior members.

6. NPCA's primary mission is to protect and preserve America's national parks and their resources, including air quality, for the use and enjoyment

of present and future generations. Since its founding in 1919, NPCA has worked to execute our mission through advocacy, education, and strategic litigation to enforce environmental laws.

7. For decades, NPCA has worked to strengthen and protect air quality in national parks nationwide through implementation and enforcement of the Clean Air Act, including targeting sources of air pollution that affect our parks. We have worked extensively to ensure implementation and enforcement of the Clean Air Act's regional haze program—a program designed to restore clean and clear air to national parks and wilderness areas by requiring states to pursue pollution reduction from industries such as power plants, oil refineries, and other sources.

8. In California, NPCA has worked on clean air issues in the Sierra Nevada and San Joaquin Valley for around 20 years. For instance, NPCA commented on the state's regional haze plan and led a campaign focused on public awareness of air pollution issues in the Sierra Nevada parks. Specific to fine particulate matter (PM2.5) in the San Joaquin Valley, NPCA was heavily engaged in the state and local rulemaking processes related to California's 2018 PM2.5 State Implementation Plan (plan) for well over 6 years—submitting comments to EPA, the California Air Resource Board (CARB), and the Valley Air District, as well as attending a variety of meetings, workshops, and hearings related to the plan.

9. NPCA has also successfully challenged EPA actions for the San Joaquin Valley as unlawful on several occasions, including *Medical Advocates for Healthy Air et al. v. EPA*, No. 20-72780, 2022 WL 1109656 (9th Cir. April 13, 2022) (EPA approval of 2006 24-hour PM2.5 plan); *Comité Progreso de Lamont et al. v. EPA*, N.D. Cal. No. 3:21-cv-8733-WHA (EPA failure to take final action on PM2.5 plans, resolved by consent decree); *Committee for a Better Arvin et al. v. EPA*, N.D. Cal. No. 18-cv-05700-RS (EPA failure to make findings that Valley PM2.5 plans were overdue).

10. More recently, NPCA joined with other groups to submit comments to EPA on its proposal to approve inadequate contingency measures to address PM2.5 pollution.

11. Through my work at NPCA, I am aware that the San Joaquin Valley air basin has been designated as a serious nonattainment area for the 1997 PM2.5 National Ambient Air Quality Standard (standard). I am also aware that the San Joaquin Valley is a serious nonattainment area for the 2006 24-hour PM2.5 standard and the 2012 annual PM2.5 standard.

12. I am aware that the San Joaquin Valley has a history of failing to attain National Ambient Air Quality Standards by the dates required by the Clean Air Act, including PM2.5 standards. For example, I understand that the San Joaquin Valley failed to meet the attainment deadline for the 1997 annual PM2.5

standard, so EPA reclassified it from a "moderate" nonattainment area to "serious," and set December 31, 2015 as the new attainment deadline. I also understand that the Valley did not meet this deadline, and EPA subsequently approved a revised plan for the Valley pursuant to section 189(d) of the Clean Air Act and set a new attainment date of December 31, 2023. EPA subsequently extended the deadline to December 31, 2024. On information and belief, I understand that EPA has still not made a finding that the Valley meets the 1997 PM2.5 standard.

13. Further, I am aware that the San Joaquin Valley has not met the deadline for attainment of the 2006 24-hour PM2.5 standard. Pursuant to section 188(e) of the Clean Air Act, EPA granted a five-year extension and set December 31, 2024 as the attainment deadline for the 2006 24-hour standard. On information and belief, EPA has not made any finding with regard to whether the Valley met the standard, and available data indicates the Valley has not attained the standard.

14. In both my professional and personal capacities, I am concerned that EPA and other responsible authorities are neglecting the requirements of the Clean Air Act and failing to institute sufficient requirements to timely achieve pollution reductions and attain PM2.5 standards, including the adoption of meaningful contingency measures.

15. Through my work at NPCA, I am aware that Yosemite, Sequoia, and Kings Canyon are harmed by PM2.5 pollution originating from within the San

Joaquin Valley Air District.

16. In addition to my role as NPCA's Sierra Nevada Program Manager, I am a paying dues member of NPCA. In my free time, I frequently visit Yosemite, Sequoia, and Kings Canyon National Parks for personal enjoyment.

17. For both work and personal recreation, I generally visit Yosemite, Sequoia, and Kings Canyon National Parks at least once every two to three months.

18. While in each of these three parks I have seen firsthand the severe effect that PM2.5 air pollution has on overall visibility. This reduced visibility (or haze) has an obvious and direct impact on my ability to fully enjoy the incredible scenery that these parks have to offer. I can think of numerous occasions while in one of those three parks during PM2.5 season where features I knew were in the distance were partially or wholly obscured by haze.

19. I have read numerous studies outlining the significant harm that inhaling elevated levels of particulate matter can have on my health. Consequently, my wife and I limit the dates for when we choose to visit these parks for recreation by paying close attention to air quality alerts and PM2.5 levels. Similarly, when in the parks, I gauge the level of activity that I partake in based on current air quality levels, sometimes forsaking a longer hike because of my awareness that exercise subjects me to inhaling even more dirty air than normal.

20. As an employee and member of NPCA, I am also concerned with the secondary damage that PM2.5 pollution is causing to plant and animal life in these parks. I am aware of reports linking PM2.5 precursor pollutants to harmful effects on the wellbeing of Sierra ecosystems. These precursor impacts include ammonia and nitrogen oxide pollution interfering with essential ecosystem functions—such as altering the ability of plants like Jeffrey pines to photosynthesize or the deposition of excess nitrogen causing extensive algae blooms in high altitude lakes.

21. I am also aware of reports linking PM2.5 precursor air pollution to the ongoing tree mortality crisis that has devastated the Sierras over the last several years. I have seen firsthand the impact tree mortality has had on Yosemite, Sequoia, and Kings Canyon, and know how key those ecosystems are to biodiversity in the p arks. With numerous other environmental stressors like drought, large scale wildfires, and bark beetles already harming Sierra forests, our parks cannot afford additional damage from preventable air pollution.

22. For the reasons discussed above, both as an employee and as a member, I fully support NPCA in their lawsuit to ensure that requirements of the Clean Air Act governing EPA's duty to develop robust contingency measures to control PM2.5 pollution in the San Joaquin Valley are enforced.

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

Executed this 31st day of March, 2025 in Sacramento, California.

Mark Rose

Mark Rose

No. 24-7270

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

COMMITTEE FOR A BETTER ARVIN, *et al.*,

Petitioners,

v.

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

Respondents,

and

CALIFORNIA AIR RESOURCES BOARD, *et al.*,

Respondents-Intervenors.

Petition for Review of Final Action of the
U.S. Environmental Protection Agency

ADDENDUM

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Attorneys for Petitioners

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Statutes

Regulations

Other

erwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
....	5 U.S.C. 1009(c).	June 11, 1946, ch. 324, §10(c), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

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

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
....	5 U.S.C. 1009(d).	June 11, 1946, ch. 324, §10(d), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

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

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
....	5 U.S.C. 1009(e).	June 11, 1946, ch. 324, §10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

Statutory Notes and Related Subsidiaries

ABBREVIATION OF RECORD

Pub. L. 85–791, Aug. 28, 1958, 72 Stat. 941, which authorized abbreviation of record on review or enforcement of orders of administrative agencies and review on the original papers, provided, in section 35 thereof, that: "This Act [see Tables for classification] shall not be construed to repeal or modify any provision of the Administrative Procedure Act [see Short Title note set out preceding section 551 of this title]."

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

§ 801. Congressional review

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule, including whether it is a major rule; and

(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Rep-

Editorial Notes

CODIFICATION

Act July 14, 1955, ch. 360, 69 Stat. 322, as amended, known as the Clean Air Act, which was formerly classified to chapter 15B (§ 1857 et seq.) of this title, was completely revised by Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 685, and was reclassified to this chapter.

SUBCHAPTER I—PROGRAMS AND ACTIVITIES

PART A—AIR QUALITY AND EMISSION LIMITATIONS

Editorial Notes

CODIFICATION

Pub. L. 95–95, title I, § 117(a), Aug. 7, 1977, 91 Stat. 712, designated sections 7401 to 7428 of this title as part A.

§ 7401. Congressional findings and declaration of purpose

(a) Findings

The Congress finds—

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

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted

in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

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

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

(b) Declaration

The purposes of this subchapter are—

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

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

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

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

(c) Pollution prevention

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

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

Editorial Notes

CODIFICATION

Section was formerly classified to section 1857 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in a prior section 1857 of this title, act of July 14, 1955, ch. 360, § 1, 69 Stat. 322, prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1990—Subsec. (a)(3). Pub. L. 101–549, § 108(k)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and".

Subsec. (b)(4). Pub. L. 101–549, § 108(k)(2), inserted "prevention and" after "pollution".

Subsec. (c). Pub. L. 101–549, § 108(k)(3), added subsec. (c).

1967—Subsec. (b)(1). Pub. L. 90–148 inserted "and enhance the quality of" after "to protect".

1965—Subsec. (b). Pub. L. 89–272 substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–549, title VII, § 711(b), Nov. 15, 1990, 104 Stat. 2684, provided that:

"(1) Except as otherwise expressly provided, the amendments made by this Act [see Tables for classification] shall be effective on the date of enactment of this Act [Nov. 15, 1990].

"(2) The Administrator's authority to assess civil penalties under section 205(c) of the Clean Air Act [42 U.S.C. 7524(c)], as amended by this Act, shall apply to violations that occur or continue on or after the date of enactment of this Act. Civil penalties for violations that occur prior to such date and do not continue after such date shall be assessed in accordance with the provisions of the Clean Air Act [42 U.S.C. 7401 et seq.] in effect immediately prior to the date of enactment of this Act.

"(3) The civil penalties prescribed under sections 205(a) and 211(d)(1) of the Clean Air Act [42 U.S.C. 7524(a), 7545(d)(1)], as amended by this Act, shall apply to violations that occur on or after the date of enactment of this Act. Violations that occur prior to such date shall be subject to the civil penalty provisions prescribed in sections 205(a) and 211(d) of the Clean Air Act in effect immediately prior to the enactment of this Act. The injunctive authority prescribed under section 211(d)(2) of the Clean Air Act, as amended by this Act, shall apply to violations that occur or continue on or after the date of enactment of this Act.

"(4) For purposes of paragraphs (2) and (3), where the date of a violation cannot be determined it will be assumed to be the date on which the violation is discovered."

EFFECTIVE DATE OF 1977 AMENDMENT; PENDING ACTIONS; CONTINUATION OF RULES, CONTRACTS, AUTHORIZATIONS, ETC.; IMPLEMENTATION PLANS

Pub. L. 95–95, title IV, § 406, Aug. 7, 1977, 91 Stat. 795, as amended by Pub. L. 95–190, § 14(b)(6), Nov. 16, 1977, 91 Stat. 1405, provided that:

"(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977] shall abate by reason of the taking effect of the amendments made by this Act [see Short Title of 1977 Amendment note below]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

"(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977], and pertaining to any functions, powers, requirements, and duties under the Clean Air Act, as in effect immediately prior to the date of enactment of this Act, and not suspended by the Administrator or the courts, shall continue in full force and effect after the date of enactment of this Act until modified or rescinded in accordance with the Clean Air Act as amended by this Act [see Short Title of 1977 Amendment note below].

"(c) Nothing in this Act [see Short Title of 1977 Amendment note below] nor any action taken pursuant to this Act shall in any way affect any requirement of an approved implementation plan in effect under section 110 of the Clean Air Act [section 7410 of this title] or any other provision of the Act in effect under the Clean Air Act before the date of enactment of this section [Aug. 7, 1977] until modified or rescinded in accordance with the Clean Air Act [this chapter] as amended by this Act [see Short Title of 1977 Amendment note below].

"(d)(1) Except as otherwise expressly provided, the amendments made by this Act [see Short Title of 1977 Amendment note below] shall be effective on date of enactment [Aug. 7, 1977].

"(2) Except as otherwise expressly provided, each State required to revise its applicable implementation plan by reason of any amendment made by this Act [see Short Title of 1977 Amendment note below] shall adopt and submit to the Administrator of the Environmental Protection Administration such plan revision before the later of the date—

"(A) one year after the date of enactment of this Act [Aug. 7, 1977], or

"(B) nine months after the date of promulgation by the Administrator of the Environmental Protection Administration of any regulations under an amendment made by this Act which are necessary for the approval of such plan revision."

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–40, § 1, Aug. 5, 1999, 113 Stat. 207, provided that: "This Act [amending section 7412 of this title and enacting provisions set out as notes under section 7412 of this title] may be cited as the 'Chemical Safety Information, Site Security and Fuels Regulatory Relief Act'."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–286, § 1, Oct. 27, 1998, 112 Stat. 2773, provided that: "This Act [amending section 7511b of this title and enacting provisions set out as a note under section 7511b of this title] may be cited as the 'Border Smog Reduction Act of 1998'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399, is popularly known as the "Clean Air Act Amendments of 1990". See Tables for classification.

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–23, § 1, July 17, 1981, 95 Stat. 139, provided: "That this Act [amending sections 7410 and 7413 of this title] may be cited as the 'Steel Industry Compliance Extension Act of 1981'."

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–95, § 1, Aug. 7, 1977, 91 Stat. 685, provided that: "This Act [enacting sections 4362, 7419 to 7428, 7450 to 7459, 7470 to 7479, 7491, 7501 to 7508, 7548, 7549, 7551, 7617 to 7625, and 7626 of this title, amending sections 7403, 7405, 7407 to 7415, 7417, 7418, 7521 to 7525, 7541, 7543, 7544, 7545, 7550, 7571, 7601 to 7605, 7607, 7612, 7613, and 7616 of this title, repealing section 1857c–10 of this title, and enacting provisions set out as notes under this section, sections 7403, 7422, 7470, 7479, 7502, 7521, 7548, and 7621 of this title, and section 792 of Title 15, Commerce and Trade] may be cited as the 'Clean Air Act Amendments of 1977'."

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–604, § 1, Dec. 31, 1970, 84 Stat. 1676, provided: "That this Act [amending this chapter generally] may be cited as the 'Clean Air Amendments of 1970'."

SHORT TITLE OF 1967 AMENDMENT

Pub. L. 90–148, § 1, Nov. 21, 1967, 81 Stat. 485, provided: "That this Act [amending this chapter generally] may be cited as the 'Air Quality Act of 1967'."

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–675, § 1, Oct. 15, 1966, 80 Stat. 954, provided: "That this Act [amending sections 7405 and 7616 of this title and repealing section 1857f–8 of this title] may be cited as the 'Clean Air Act Amendments of 1966'."

SHORT TITLE

Act July 14, 1955, ch. 360, title III, § 317, formerly § 14, as added by Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 401; renumbered § 307 by Pub. L. 89–272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; renumbered § 310 by Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 499; renumbered § 317 by Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1705, provided that: "This Act [enacting this chapter] may be cited as the 'Clean Air Act'."

Act July 14, 1955, ch. 360, title II, § 201, as added by Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 992, and amended by Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 499, provided that: "This title [enacting subchapter II of this chapter] may be cited as the 'National Emission Standards Act'." Prior to its amendment by Pub. L. 90–148, title II of act June 14, 1955, was known as the "Motor Vehicle Air Pollution Control Act".

Act July 14, 1955, ch. 360, title IV, § 401, as added by Dec. 31, 1970, Pub. L. 91–604, § 14, 84 Stat. 1709, provided that: "This title [enacting subchapter IV of this chapter] may be cited as the 'Noise Pollution and Abatement Act of 1970'."

SAVINGS PROVISION

Pub. L. 101–549, title VII, § 711(a), Nov. 15, 1990, 104 Stat. 2684, provided that: "Except as otherwise expressly provided in this Act [see Tables for classification], no suit, action, or other proceeding lawfully commenced by the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [42 U.S.C. 7401 et seq.], as in effect immediately prior to the date of enactment of this Act [Nov. 15, 1990], shall abate by reason of the taking effect of the amendments made by this Act."

IMPACT ON SMALL COMMUNITIES

Pub. L. 101–549, title VIII, § 810, Nov. 15, 1990, 104 Stat. 2690, provided that: "Before implementing a provision of this Act [see Tables for classification], the Administrator of the Environmental Protection Agency shall consult with the Small Communities Coordinator of the Environmental Protection Agency to determine the impact of such provision on small communities, including the estimated cost of compliance with such provision."

RADON ASSESSMENT AND MITIGATION

Pub. L. 99–499, title I, § 118(k), Oct. 17, 1986, 100 Stat. 1659, as amended by Pub. L. 105–362, title V, § 501(i), Nov. 10, 1998, 112 Stat. 3284, provided that:

"(1) NATIONAL ASSESSMENT OF RADON GAS.—No later than one year after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to the Congress a report which shall, to the extent possible—

"(A) identify the locations in the United States where radon is found in structures where people normally live or work, including educational institutions;

"(B) assess the levels of radon gas that are present in such structures;

"(C) determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location identified under subparagraph (A) the extent of the threat to human health;

"(D) determine methods of reducing or eliminating the threat to human health of radon gas and radon daughters; and

"(E) include guidance and public information materials based on the findings or research of mitigating radon.

"(2) RADON MITIGATION DEMONSTRATION PROGRAM.—

"(A) DEMONSTRATION PROGRAM.—The Administrator shall conduct a demonstration program to test methods and technologies of reducing or eliminating radon gas and radon daughters where it poses a threat to human health. The Administrator shall take into consideration any demonstration program underway in the Reading Prong of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

"(B) LIABILITY.—Liability, if any, for persons undertaking activities pursuant to the radon mitigation demonstration program authorized under this subsection shall be determined under principles of existing law.

"(3) CONSTRUCTION OF SECTION.—Nothing in this subsection shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this subsection. Nothing in paragraph (1) or (2) shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law."

SPILL CONTROL TECHNOLOGY

Pub. L. 99–499, title I, §118(n), Oct. 17, 1986, 100 Stat. 1660, provided that:

"(1) ESTABLISHMENT OF PROGRAM.—Within 180 days of enactment of this subsection [Oct. 17, 1986], the Secretary of the United States Department of Energy is directed to carry out a program of testing and evaluation of technologies which may be utilized in responding to liquefied gaseous and other hazardous substance spills at the Liquefied Gaseous Fuels Spill Test Facility that threaten public health or the environment.

"(2) TECHNOLOGY TRANSFER.—In carrying out the program established under this subsection, the Secretary shall conduct a technology transfer program that, at a minimum—

"(A) documents and archives spill control technology;

"(B) investigates and analyzes significant hazardous spill incidents;

"(C) develops and provides generic emergency action plans;

"(D) documents and archives spill test results;

"(E) develops emergency action plans to respond to spills;

"(F) conducts training of spill response personnel; and

"(G) establishes safety standards for personnel engaged in spill response activities.

"(3) CONTRACTS AND GRANTS.—The Secretary is directed to enter into contracts and grants with a nonprofit organization in Albany County, Wyoming, that is capable of providing the necessary technical support and which is involved in environmental activities related to such hazardous substance related emergencies.

"(4) USE OF SITE.—The Secretary shall arrange for the use of the Liquefied Gaseous Fuels Spill Test Facility to carry out the provisions of this subsection."

RADON GAS AND INDOOR AIR QUALITY RESEARCH

Pub. L. 99–499, title IV, Oct. 17, 1986, 100 Stat. 1758, provided that:

"SEC. 401. SHORT TITLE.

"This title may be cited as the 'Radon Gas and Indoor Air Quality Research Act of 1986'.

"SEC. 402. FINDINGS.

"The Congress finds that:

"(1) High levels of radon gas pose a serious health threat in structures in certain areas of the country.

"(2) Various scientific studies have suggested that exposure to radon, including exposure to naturally occurring radon and indoor air pollutants, poses a public health risk.

"(3) Existing Federal radon and indoor air pollutant research programs are fragmented and underfunded.

"(4) An adequate information base concerning exposure to radon and indoor air pollutants should be developed by the appropriate Federal agencies.

"SEC. 403. RADON GAS AND INDOOR AIR QUALITY RESEARCH PROGRAM.

"(a) DESIGN OF PROGRAM.—The Administrator of the Environmental Protection Agency shall establish a research program with respect to radon gas and indoor air quality. Such program shall be designed to—

"(1) gather data and information on all aspects of indoor air quality in order to contribute to the understanding of health problems associated with the existence of air pollutants in the indoor environment;

"(2) coordinate Federal, State, local, and private research and development efforts relating to the improvement of indoor air quality; and

"(3) assess appropriate Federal Government actions to mitigate the environmental and health risks associated with indoor air quality problems.

"(b) PROGRAM REQUIREMENTS.—The research program required under this section shall include—

"(1) research and development concerning the identification, characterization, and monitoring of the sources and levels of indoor air pollution, including radon, which includes research and development relating to—

"(A) the measurement of various pollutant concentrations and their strengths and sources,

"(B) high-risk building types, and

"(C) instruments for indoor air quality data collection;

"(2) research relating to the effects of indoor air pollution and radon on human health;

"(3) research and development relating to control technologies or other mitigation measures to prevent or abate indoor air pollution (including the development, evaluation, and testing of individual and generic control devices and systems);

"(4) demonstration of methods for reducing or eliminating indoor air pollution and radon, including sealing, venting, and other methods that the Administrator determines may be effective;

"(5) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, for the purpose of developing—

"(A) methods for assessing the potential for radon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, porosity of soil, and radon content of soil; and

"(B) design measures to avoid indoor air pollution; and

"(6) the dissemination of information to assure the public availability of the findings of the activities under this section.

"(c) ADVISORY COMMITTEES.—The Administrator shall establish a committee comprised of individuals representing Federal agencies concerned with various aspects of indoor air quality and an advisory group comprised of individuals representing the States, the scientific community, industry, and public interest organizations to assist him in carrying out the research program for radon gas and indoor air quality.

"(d) IMPLEMENTATION PLAN.—Not later than 90 days after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to the Congress a plan for implementation of the research program under this section. Such plan shall also be submitted to the EPA Science Advisory Board, which shall, within a reasonable period of time, submit its comments on such plan to Congress.

"(e) REPORT.—Not later than 2 years after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to Congress a report respecting his activities under this section and making such recommendations as appropriate.

"SEC. 404. CONSTRUCTION OF TITLE.

"Nothing in this title shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this title. Nothing in this title shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

"SEC. 405. AUTHORIZATIONS.

"There are authorized to be appropriated to carry out the activities under this title and under section 118(k) of the Superfund Amendments and Reauthorization Act of 1986 (relating to radon gas assessment and demonstration program) [section 118(k) of Pub. L. 99–499, set out as a note above] not to exceed $5,000,000 for each of the fiscal years 1987, 1988, and 1989. Of such sums appropriated in fiscal years 1987 and 1988, two-fifths shall be reserved for the implementation of section 118(k)(2)."

STUDY OF ODORS AND ODOROUS EMISSIONS

Pub. L. 95–95, title IV, §403(b), Aug. 7, 1977, 91 Stat. 792, directed Administrator of Environmental Protection Agency to conduct a study and report to Congress not later than Jan. 1, 1979, on effects on public health and welfare of odors and odorous emissions, source of such emissions, technology or other measures available for control of such emissions and costs of such technology or measures, and costs and benefits of alternative measures or strategies to abate such emissions.

LIST OF CHEMICAL CONTAMINANTS FROM ENVIRONMENTAL POLLUTION FOUND IN HUMAN TISSUE

Pub. L. 95–95, title IV, §403(c), Aug. 7, 1977, 91 Stat. 792, directed Administrator of EPA, not later than twelve months after Aug. 7, 1977, to publish throughout the United States a list of all known chemical contaminants resulting from environmental pollution which have been found in human tissue including blood, urine, breast milk, and all other human tissue, such list to be prepared for the United States and to indicate approximate number of cases, range of levels found, and mean levels found, directed Administrator, not later than eighteen months after Aug. 7, 1977, to publish in same manner an explanation of what is known about the manner in which chemicals entered the environment and thereafter human tissue, and directed Administrator, in consultation with National Institutes of Health, the National Center for Health Statistics, and the National Center for Health Services Research and Development, to, if feasible, conduct an epidemiological study to demonstrate the relationship between levels of chemicals in the environment and in human tissue, such study to be made in appropriate regions or areas of the United States in order to determine any different results in such regions or areas, and the results of such study to be reported, as soon as practicable, to appropriate committee of Congress.

STUDY ON REGIONAL AIR QUALITY

Pub. L. 95–95, title IV, §403(d), Aug. 7, 1977, 91 Stat. 793, directed Administrator of EPA to conduct a study of air quality in various areas throughout the country including the gulf coast region, such study to include analysis of liquid and solid aerosols and other fine particulate matter and contribution of such substances to visibility and public health problems in such areas, with Administrator to use environmental health experts from the National Institutes of Health and other outside agencies and organizations.

RAILROAD EMISSION STUDY

Pub. L. 95–95, title IV, §404, Aug. 7, 1977, 91 Stat. 793, as amended by H. Res. 549, Mar. 25, 1980, directed Administrator of EPA to conduct a study and investigation of emissions of air pollutants from railroad locomotives, locomotive engines, and secondary power sources on railroad rolling stock, in order to determine extent to which such emissions affect air quality in air quality control regions throughout the United States, technological feasibility and current state of technology for controlling such emissions, and status and effect of current and proposed State and local regulations affecting such emissions, and within one hundred and eighty days after commencing such study and investigation, Administrator to submit a report of such study and investigation, together with recommendations for appropriate legislation, to Senate Committee on Environment and Public Works and House Committee on Energy and Commerce.

STUDY AND REPORT CONCERNING ECONOMIC APPROACHES TO CONTROLLING AIR POLLUTION

Pub. L. 95–95, title IV, §405, Aug. 7, 1977, 91 Stat. 794, directed Administrator, in conjunction with Council of Economic Advisors, to undertake a study and assessment of economic measures for control of air pollution which could strengthen effectiveness of existing methods of controlling air pollution, provide incentives to abate air pollution greater than that required by Clean Air Act, and serve as primary incentive for controlling air pollution problems not addressed by Clean Air Act, and directed that not later than 2 years after Aug. 7, 1977, Administrator and Council conclude study and submit a report to President and Congress.

Executive Documents

TRANSFER OF FUNCTIONS

Reorg. Plan No. 3 of 1970, §2(a)(3), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, transferred to Administrator of Environmental Protection Agency functions vested by law in Secretary of Health, Education, and Welfare or in Department of Health, Education, and Welfare which are administered through Environmental Health Service, including functions exercised by National Air Pollution Control Administration, and Environmental Control Administration's Bureau of Solid Waste Management, Bureau of Water Hygiene, and Bureau of Radiological Health, except insofar as functions carried out by Bureau of Radiological Health pertain to regulation of radiation from consumer products, including electronic product radiation, radiation as used in healing arts, occupational exposure to radiation, and research, technical assistance, and training related to radiation from consumer products, radiation as used in healing arts, and occupational exposure to radiation.

NATIONAL INDUSTRIAL POLLUTION CONTROL COUNCIL

For provisions relating to establishment of National Industrial Pollution Control Council, see Ex. Ord. No. 11523, Apr. 9, 1970, 35 F.R. 5993, set out as a note under section 4321 of this title.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to responsibility of head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

EXECUTIVE ORDER NO. 10779

Ex. Ord. No. 10779, Aug. 21, 1958, 23 F.R. 6487, which related to cooperation of Federal agencies with State and local authorities, was superseded by Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7663, formerly set out under section 7418 of this title.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for prevention, control, and abatement of air pollution at Federal facilities, was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title.

PROMOTING DOMESTIC MANUFACTURING AND JOB CREATION—POLICIES AND PROCEDURES RELATING TO IMPLEMENTATION OF AIR QUALITY STANDARDS

Memorandum of President of the United States, Apr. 12, 2018, 83 F.R. 16761, which related to State Implementation Plans for the Regional Haze Program, was revoked by Ex. Ord. No. 13990, §7(d), Jan. 20, 2021, 86 F.R. 7042, set out in a note under section 4321 of this title.

trol of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution)'' after ''section 7407 of this title''.

Pub. L. 101–549, § 102(f)(2)(B), which directed insertion of ''any commission established under section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution) or'' after ''program costs of'', was executed by making the insertion after that phrase the first place it appeared to reflect the probable intent of Congress.

Pub. L. 101–549, § 102(f)(2)(C), which directed insertion of ''or such commission'' after ''such agency'' in last sentence, was executed by making insertion after ''such agency'' the first place it appeared in the last sentence to reflect the probable intent of Congress.

Pub. L. 101–549, §§ 102(f)(2)(D), 802(f), substituted ''three-fifths of the air quality implementation program costs of such agency or commission'' for ''three-fourths of the air quality planning program costs of such agency''.

1970—Pub. L. 91–604 struck out designation ''(a)'', substituted provisions authorizing Federal grants for the purpose of developing implementation plans and provisions requiring the designated State agency to be capable of recommending plans for implementation of national primary and secondary ambient air quality standards, for provisions authorizing Federal grants for the purpose of expediting the establishment of air quality standards and provisions requiring the designated State agency to be capable of recommending standards of air quality and plans for implementation thereof, respectively, and struck out subsec. (b) which authorized establishment of air quality planning commissions.

§ 7407. Air quality control regions

(a) Responsibility of each State for air quality; submission of implementation plan

Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

(b) Designated regions

For purposes of developing and carrying out implementation plans under section 7410 of this title—

(1) an air quality control region designated under this section before December 31, 1970, or a region designated after such date under subsection (c), 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.

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

(July 14, 1955, ch. 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.)

[1] See References in Text note below.

Editorial Notes

References in Text

Section 7413 of this title, referred to in subsec. (e)(3), was amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsec. (d) of section 7413 no longer relates to final compliance orders.

Codification

Section was formerly classified to section 1857c–2 of this title.

Prior Provisions

A prior section 107 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 490, related to air quality control regions and was classified to section 1857c–2 of this title, prior to repeal by Pub. L. 91–604.

Another prior section 107 of act July 14, 1955, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 399, was renumbered section 111 by Pub. L. 90–148 and is classified to section 7411 of this title.

Amendments

2004—Subsec. (d)(6), (7). Pub. L. 108–199 added pars. (6) and (7).

1990—Subsec. (d). Pub. L. 101–549 amended subsec. (d) generally, substituting present provisions for provisions which required States to submit lists of regions not in compliance on Aug. 7, 1977, with certain air quality standards to be submitted to the Administrator, and which authorized States to revise and resubmit such lists from time to time.

1977—Subsecs. (d), (e). Pub. L. 95–95 added subsecs. (d) and (e).

Statutory Notes and Related Subsidiaries

Effective Date of 1977 Amendment

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.

Ozone and Particulate Matter Standards

Pub. L. 108–199, div. G, title IV, §425(b), Jan. 23, 2004, 118 Stat. 417, provided that: "Except as provided in paragraphs (6) and (7) of section 107(d) of the Clean Air Act [subsec. (d)(6), (7) of this section] (as added by subsection (a)), section 6101, subsections (a) and (b) of section 6102, and section 6103 of the Transportation Equity Act for the 21st Century [Pub. L. 105–178] (42 U.S.C. 7407 note; 112 Stat. 463), as in effect on the day before the date of enactment of this Act [Jan. 23, 2004], shall remain in effect."

Pub. L. 105–178, title VI, June 9, 1998, 112 Stat. 463, as amended by Pub. L. 109–59, title VI, §6012(a), Aug. 10, 2005, 119 Stat. 1882, provided that:

"SEC. 6101. FINDINGS AND PURPOSE.

"(a) The Congress finds that—

"(1) there is a lack of air quality monitoring data for fine particle levels, measured as $PM_{2.5}$, in the United States and the States should receive full funding for the monitoring efforts;

"(2) such data would provide a basis for designating areas as attainment or nonattainment for any $PM_{2.5}$ national ambient air quality standards pursuant to the standards promulgated in July 1997;

"(3) the President of the United States directed the Administrator of the Environmental Protection Agency (referred to in this title as the 'Administrator') in a memorandum dated July 16, 1997, to complete the next periodic review of the particulate matter national ambient air quality standards by July 2002 in order to determine 'whether to revise or maintain the standards';

"(4) the Administrator has stated that 3 years of air quality monitoring data for fine particle levels, measured as $PM_{2.5}$ and performed in accordance with any applicable Federal reference methods, is appropriate for designating areas as attainment or nonattainment pursuant to the July 1997 promulgated standards; and

"(5) the Administrator has acknowledged that in drawing boundaries for attainment and nonattainment areas for the July 1997 ozone national air quality standards, Governors would benefit from considering implementation guidance from EPA on drawing area boundaries.

"(b) The purposes of this title are—

"(1) to ensure that 3 years of air quality monitoring data regarding fine particle levels are gathered for use in the determination of area attainment or nonattainment designations respecting any $PM_{2.5}$ national ambient air quality standards;

"(2) to ensure that the Governors have adequate time to consider implementation guidance from EPA on drawing area boundaries prior to submitting area designations respecting the July 1997 ozone national ambient air quality standards;

"(3) to ensure that the schedule for implementation of the July 1997 revisions of the ambient air quality standards for particulate matter and the schedule for the Environmental Protection Agency's visibility regulations related to regional haze are consistent with the timetable for implementation of such particulate matter standards as set forth in the President's Implementation Memorandum dated July 16, 1997.

"SEC. 6102. PARTICULATE MATTER MONITORING PROGRAM.

"(a) Through grants under section 103 of the Clean Air Act [42 U.S.C. 7403] the Administrator of the Environmental Protection Agency shall use appropriated funds no later than fiscal year 2000 to fund 100 percent of the cost of the establishment, purchase, operation and maintenance of a $PM_{2.5}$ monitoring network necessary to implement the national ambient air quality standards for $PM_{2.5}$ under section 109 of the Clean Air Act [42 U.S.C. 7409]. This implementation shall not result in a diversion or reprogramming of funds from other Federal, State or local Clean Air Act activities. Any funds previously diverted or reprogrammed from section 105 Clean Air Act [42 U.S.C. 7405] grants for $PM_{2.5}$ monitors must be restored to State or local air programs in fiscal year 1999.

"(b) EPA and the States, consistent with their respective authorities under the Clean Air Act [42 U.S.C. 7401 et seq.], shall ensure that the national network (designated in subsection (a)) which consists of the $PM_{2.5}$ monitors necessary to implement the national ambient air quality standards is established by December 31, 1999.

"(c)(1) The Governors shall be required to submit designations referred to in section 107(d)(1) of the Clean Air Act [42 U.S.C. 7407(d)(1)] for each area following promulgation of the July 1997 $PM_{2.5}$ national ambient air quality standard within 1 year after receipt of 3 years of air quality 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, 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 [42 U.S.C. 7492(e)(2)], 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 [42 U.S.C. 7502] 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 [42 U.S.C. 7407(d)(1)] 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) FIELD STUDY.—Not later than 2 years after the date of enactment of the SAFETEA–LU [Aug. 10, 2005], the Administrator shall—

"(1) 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 micrometers in diameter;

"(2) develop a Federal reference method to measure directly particles that are larger than 2.5 micrometers in diameter without reliance on subtracting from coarse particle measurements those particles that are equal to or smaller than 2.5 micrometers in diameter;

"(3) develop a method of measuring the composition of coarse particles; and

"(4) submit a report on the study and responsibilities of the Administrator under paragraphs (1) through (3) to—

"(A) the Committee on Energy and Commerce of the House of Representatives; and

"(B) the Committee on Environment and Public Works of the Senate.

"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 [42 U.S.C. 7407(d)(1)] 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 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."

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L.

95–95, set out as an Effective Date of 1977 Amendment note under section 7401 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 Date of 1977 Amendment note under section 7401 of this title.

§ 7408. Air quality criteria and control techniques

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

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

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

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

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

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

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

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

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

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

(1) Simultaneously with the issuance of criteria under subsection (a), 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), 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,[1] 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;

[1] See Codification note below.

Editorial Notes

CODIFICATION

November 15, 1990, referred to in subsec. (e), was in the original "enactment of the Clean Air Act Amendments of 1989", and was translated as meaning the date of the enactment of Pub. L. 101–549, popularly known as the Clean Air Act Amendments of 1990, to reflect the probable intent of Congress.

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

PRIOR PROVISIONS

A prior section 108 of act July 14, 1955, was renumbered section 115 by Pub. L. 91–604 and is classified to section 7415 of this title.

AMENDMENTS

1998—Subsec. (f)(3), (4). Pub. L. 105–362 struck out par. (3), which required reports by the Secretary of Transportation and the Administrator to be submitted to Congress by Jan. 1, 1993, and every 3 years thereafter, reviewing and analyzing existing State and local air quality related transportation programs, evaluating achievement of goals, and recommending changes to existing programs, and par. (4), which required that in each report after the first report the Secretary of Transportation include a description of the actions taken to implement the changes recommended in the preceding report.

1990—Subsec. (e). Pub. L. 101–549, §108(a), inserted first sentence and struck out former first sentence which read as follows: "The Administrator shall, after consultation with the Secretary of Transportation and the Secretary of Housing and Urban Development and State and local officials and within 180 days after August 7, 1977, and from time to time thereafter, publish guidelines on the basic program elements for the planning process assisted under section 7505 of this title."

Subsec. (f)(1). Pub. L. 101–549, §108(b), in introductory provisions, substituted present provisions for provisions relating to Federal agencies, States, and air pollution control agencies within either 6 months or one year after Aug. 7, 1977.

Subsec. (f)(1)(A). Pub. L. 101–549, §108(b), substituted present provisions for provisions relating to information prepared in cooperation with Secretary of Transportation, regarding processes, procedures, and methods to reduce certain pollutants.

Subsec. (f)(3), (4). Pub. L. 101–549, §111, added pars. (3) and (4).

Subsec. (g). Pub. L. 101–549, §108(c), added subsec. (g).

Subsec. (h). Pub. L. 101–549, §108(c), added subsec. (h).

1977—Subsec. (a)(1)(A). Pub. L. 95–95, §401(a), substituted "emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" for "which in his judgment has an adverse effect on public health or welfare".

Subsec. (b)(1). Pub. L. 95–95, §104(a), substituted "cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology" for "technology and costs of emission control".

Subsec. (c). Pub. L. 95–95, §104(b), inserted provision directing the Administrator, not later than six months after Aug. 7, 1977, to revise and reissue criteria relating to concentrations of NO_2 over such period (not more than three hours) as he deems appropriate, with the criteria to include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

Subsecs. (e), (f). Pub. L. 95–95, §105, added subsecs. (e) and (f).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1977 AMENDMENT

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.

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 Date of 1977 Amendment note under section 7401 of this title.

§ 7409. National primary and secondary ambient air quality standards

(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) 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) 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.

(July 14, 1955, ch. 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.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 1857c–4 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 classified to section 7416 of this title.

AMENDMENTS

1977—Subsec. (c). Pub. L. 95–95, § 106(b), added subsec. (c).

Subsec. (d). Pub. L. 95–95, § 106(a), added subsec. (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1977 AMENDMENT

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.

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 Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-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 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees.

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 [42 U.S.C. 7408] 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 [42 U.S.C. 7401 et seq.] 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."

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

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;

(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 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 (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 (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; 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. 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), 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)[1] of this title, suspensions under subsection (f) or (g) (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)[1] 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) 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)), 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.

[1] See References in Text note below.

(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)[1] 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), 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.

(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[1] of this title, as in effect before August 7, 1977, or section 7413(d)[1] 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[1] of this title as in effect before August 7, 1977, or under section 7413(d)[1] 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) (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d)[1] of this title (relating to compliance orders), a plan promulgation under subsection (c), or a plan revision under subsection (a)(3); 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, 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) (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) (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 (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[2] effectiveness, need for revision, or implementation of any plan or plan revision required under this chapter.

(July 14, 1955, ch. 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; 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,

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

§§101(b)–(d), 102(h), 107(c), 108(d), title IV, §412, Nov. 15, 1990, 104 Stat. 2404–2408, 2422, 2464, 2466, 2634.)

Editorial Notes

References in Text

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a)(3)(B), is Pub. L. 93–319, June 22, 1974, 88 Stat. 246, which is classified principally to chapter 16C (§791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

Section 7413 of this title, referred to in subsecs. (a)(3)(C), (6), (f)(5), (g)(3), and (i), was amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsecs. (d) and (e) of section 7413 no longer relates to final compliance orders and steel industry compliance extension, respectively.

Section 1857c–10 of this title, as in effect before August 7, 1977, referred to in subsecs. (f)(5) and (g)(3), was in the original "section 119, as in effect before the date of the enactment of this paragraph", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, §3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of subsecs. (f)(5) and (g)(3) of this section by Pub. L. 95–95, §107, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413(d)(5) of this title. Section 7413 of this title was subsequently amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, see note above. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Codification

Section was formerly classified to section 1857c–5 of this title.

Prior Provisions

A prior section 110 of act July 14, 1955, was renumbered section 117 by Pub. L. 91–604 and is classified to section 7417 of this title.

Amendments

1990—Subsec. (a)(1). Pub. L. 101–549, §101(d)(8), substituted "3 years (or such shorter period as the Administrator may prescribe)" for "nine months" in two places.

Subsec. (a)(2). Pub. L. 101–549, §101(b), amended par. (2) generally, substituting present provisions for provisions setting the time within which the Administrator was to approve or disapprove a plan or portion thereof and listing the conditions under which the plan or portion thereof was to be approved after reasonable notice and hearing.

Subsec. (a)(3)(A). Pub. L. 101–549, §101(d)(1), struck out subpar. (A) which directed Administrator to approve any revision of an implementation plan if it met certain requirements and had been adopted by the State after reasonable notice and public hearings.

Subsec. (a)(3)(D). Pub. L. 101–549, §101(d)(1), struck out subpar. (D) which directed that certain implementation plans be revised to include comprehensive measures and requirements.

Subsec. (a)(4). Pub. L. 101–549, §101(d)(2), struck out par. (4) which set forth requirements for review procedure.

Subsec. (c)(1). Pub. L. 101–549, §102(h), amended par. (1) generally, substituting present provisions for provisions relating to preparation and publication of regulations setting forth an implementation plan, after opportunity for a hearing, upon failure of a State to make required submission or revision.

Subsec. (c)(2)(A). Pub. L. 101–549, §101(d)(3)(A), struck out subpar. (A) which required a study and report on necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations to achieve and maintain national primary ambient air quality standards.

Subsec. (c)(2)(C). Pub. L. 101–549, §101(d)(3)(B), struck out subpar. (C) which authorized suspension of certain regulations and requirements relating to management of parking supply.

Subsec. (c)(4). Pub. L. 101–549, §101(d)(3)(C), struck out par. (4) which permitted Governors to temporarily suspend measures in implementation plans relating to retrofits, gas rationing, and reduction of on-street parking.

Subsec. (c)(5)(B). Pub. L. 101–549, §101(d)(3)(D), struck out "(including the written evidence required by part D)," after "include comprehensive measures".

Subsec. (d). Pub. L. 101–549, §101(d)(4), struck out subsec. (d) which defined an applicable implementation plan for purposes of this chapter.

Subsec. (e). Pub. L. 101–549, §101(d)(5), struck out subsec. (e) which permitted an extension of time for attainment of a national primary ambient air quality standard.

Subsec. (f)(1). Pub. L. 101–549, §412, inserted "or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets)" in subpar. (A) and in last sentence.

Subsec. (g)(1). Pub. L. 101–549, §101(d)(6), substituted "12 months of submission of the proposed plan revision" for "the required four month period" in closing provisions.

Subsec. (h)(1). Pub. L. 101–549, §101(d)(7), substituted "5 years after November 15, 1990, and every three years thereafter" for "one year after August 7, 1977, and annually thereafter" and struck out at end "Each such document shall be revised as frequently as practicable but not less often than annually."

Subsecs. (k) to (n). Pub. L. 101–549, §101(c), added subsecs. (k) to (n).

Subsec. (*o*). Pub. L. 101–549, §107(c), added subsec. (*o*).

Subsec. (p). Pub. L. 101–549, §108(d), added subsec. (p).

1981—Subsec. (a)(3)(C). Pub. L. 97–23 inserted reference to extensions of compliance in decrees entered under section 7413(e) of this title (relating to iron- and steel-producing operations).

1977—Subsec. (a)(2)(A). Pub. L. 95–95, §108(a)(1), substituted "(A) except as may be provided in subparagraph (I)(i) in the case of a plan" for "(A)(i) in the case of a plan".

Subsec. (a)(2)(B). Pub. L. 95–95, §108(a)(2), substituted "transportation controls, air quality maintenance plans, and preconstruction review of direct sources of air pollution as provided in subparagraph (D)" for "land use and transportation controls".

Subsec. (a)(2)(D). Pub. L. 95–95, §108(a)(3), substituted "it includes a program to provide for the enforcement of emission limitations and regulation of the modification, construction, and operation of any stationary source, including a permit program as required in parts C and D and a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that national ambient air quality standards are achieved and maintained, and (ii) a procedure" for "it includes a procedure".

Subsec. (a)(2)(E). Pub. L. 95–95, §108(a)(4), substituted "it contains adequate provisions (i) prohibiting any stationary source within the State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of 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 to prevent significant deterioration of air quality or to protect visibility, and (ii) insuring compliance with the requirements of section 7426 of this title, relating to interstate pollution abatement'' for ''it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region''.

Subsec. (a)(2)(F). Pub. L. 95–95, § 108(a)(5), added cl. (vi).

Subsec. (a)(2)(H). Pub. L. 95–190, § 14(a)(1), substituted ''1977;'' for ''1977''.

Pub. L. 95–95, § 108(a)(6), inserted ''except as provided in paragraph (3)(C),'' after ''or (ii)'' and ''or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977'' after ''to achieve the national ambient air quality primary or secondary standard which it implements''.

Subsec. (a)(2)(I). Pub. L. 95–95, § 108(b), added subpar. (I).

Subsec. (a)(2)(J). Pub. L. 95–190, § 14(a)(2), substituted ''; and'' for '', and''.

Pub. L. 95–95, § 108(b), added subpar. (J).

Subsec. (a)(2)(K). Pub. L. 95–95, § 108(b) added subpar. (K).

Subsec. (a)(3)(C). Pub. L. 95–95, § 108(c), added subpar. (C).

Subsec. (a)(3)(D). Pub. L. 95–190, § 14(a)(4), added subpar. (D).

Subsec. (a)(5). Pub. L. 95–95, § 108(e), added par. (5).

Subsec. (a)(5)(D). Pub. L. 95–190, § 14(a)(3), struck out ''preconstruction or premodification'' before ''review''.

Subsec. (a)(6). Pub. L. 95–95, § 108(e), added par. (6).

Subsec. (c)(1). Pub. L. 95–95, § 108(d)(1), (2), substituted ''plan which meets the requirements of this section'' for ''plan for any national ambient air quality primary or secondary standard within the time prescribed'' in subpar. (A) and, in provisions following subpar. (C), directed that any portion of a plan relating to any measure described in first sentence of 7421 of this title (relating to consultation) or the consultation process required under such section 7421 of this title not be required to be promulgated before the date eight months after such date required for submission.

Subsec. (c)(3) to (5). Pub. L. 95–95, § 108(d)(3), added pars. (3) to (5).

Subsec. (d). Pub. L. 95–95, § 108(f), substituted ''and which implements the requirements of this section'' for ''and which implements a national primary or secondary ambient air quality standard in a State''.

Subsec. (f). Pub. L. 95–95, § 107(a), substituted provisions relating to the handling of national or regional energy emergencies for provisions relating to the postponement of compliance by stationary sources or classes of moving sources with any requirement of applicable implementation plans.

Subsec. (g). Pub. L. 95–95, § 108(g), added subsec. (g) relating to publication of comprehensive document.

Pub. L. 95–95, § 107(b), added subsec. (g) relating to Governor's authority to issue temporary emergency suspensions.

Subsec. (h). Pub. L. 95–190, § 14(a)(5), redesignated subsec. (g), added by Pub. L. 95–95, § 108(g), as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95–190, § 14(a)(5), redesignated subsec. (h), added by Pub. L. 95–95, § 108(g), as (i). Former subsec. (i) redesignated (j) and amended.

Subsec. (j). Pub. L. 95–190 § 14(a)(5), (6), redesignated subsec. (i), added by Pub. L. 95–95, § 108(g), as (j) and in subsec. (j) as so redesignated, substituted ''will enable such source'' for ''at such source will enable it''.

1974—Subsec. (a)(3). Pub. L. 93–319, § 4(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 93–319, § 4(b), designated existing provisions as par. (1) and existing pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, of such redesignated par. (1), and added par. (2).

Statutory Notes and Related Subsidiaries

Effective Date of 1977 Amendment

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.

Pending Actions and Proceedings

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 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 Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Implementation Plans Approved and In Effect Prior to Aug. 7, 1977

Nothing in the Clean Air Act Amendments of 1977 [Pub. L. 95–95] to affect any requirement of an approved implementation plan under this section or any other provision in effect under this chapter before Aug. 7, 1977, until modified or rescinded in accordance with this chapter as amended by the Clean Air Act Amendments of 1977, see section 406(c) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Savings Provision

Pub. L. 91–604, § 16, Dec. 31, 1970, 84 Stat. 1713, provided that:

''(a)(1) Any implementation plan adopted by any State and submitted to the Secretary of Health, Education, and Welfare, or to the Administrator pursuant to the Clean Air Act [this chapter] prior to enactment of this Act [Dec. 31, 1970] may be approved under section 110 of the Clean Air Act [this section] (as amended by this Act) [Pub. L. 91–604] and shall remain in effect, unless the Administrator determines that such implementation plan, or any portion thereof, is not consistent with applicable requirements of the Clean Air Act [this chapter] (as amended by this Act) and will not provide for the attainment of national primary ambient air quality standards in the time required by such Act. If the Administrator so determines, he shall, within 90 days after promulgation of any national ambient air quality standards pursuant to section 109(a) of the Clean Air Act [section 7409(a) of this title], notify the State and specify in what respects changes are needed to meet the additional requirements of such Act, including requirements to implement national secondary ambient air quality standards. If such changes are not adopted by the State after public hearings and within six months after such notification, the Administrator shall promulgate such changes pursuant to section 110(c) of such Act [subsec. (c) of this section].

''(2) The amendments made by section 4(b) [amending sections 7403 and 7415 of this title] shall not be construed as repealing or modifying the powers of the Administrator with respect to any conference convened under section 108(d) of the Clean Air Act [section 7415 of this title] before the date of enactment of this Act [Dec. 31, 1970].

"(b) Regulations or standards issued under this title II of the Clean Air Act [subchapter II of this chapter] prior to the enactment of this Act [Dec. 31, 1970] shall continue in effect until revised by the Administrator consistent with the purposes of such Act [this chapter]."

FEDERAL ENERGY ADMINISTRATOR

"Federal Energy Administrator", for purposes of this chapter, to mean Administrator of Federal Energy Administration established by Pub. L. 93-275, May 7, 1974, 88 Stat. 97, which is classified to section 761 et seq. of Title 15, Commerce and Trade, but with the term to mean any officer of the United States designated as such by the President until Federal Energy Administrator takes office and after Federal Energy Administration ceases to exist, see section 798 of Title 15, Commerce and Trade.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 7411. Standards of performance for new stationary sources

(a) Definitions

For purposes of this section:

(1) The term "standard of performance" means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

(2) The term "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines.

(4) The term "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term "existing source" means any stationary source other than a new source.

(7) The term "technological system of continuous emission reduction" means—

(A) a technological process for production or operation by any source which is inherently low-polluting or nonpolluting, or

(B) a technological system for continuous reduction of the pollution generated by a source before such pollution is emitted into the ambient air, including precombustion cleaning or treatment of fuels.

(8) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 792(a)] or any amendment thereto, or any subsequent enactment which supersedes such Act [15 U.S.C. 791 et seq.], or (B) which qualifies under section 7413(d)(5)(A)(ii)[1] of this title, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.

(b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B) Within one year after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one year after such publication, such standards with such modifications as he deems appropriate. The Administrator shall, at least every 8 years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard. Standards of performance or revisions thereof shall become effective upon promulgation. When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

[1] See References in Text note below.

shall require affected States to revise within 12 months their implementation plans under section 7410 of this title to contain such emission limits, schedules of compliance, and other measures as may be necessary to carry out regulations promulgated pursuant to this subsection.

(f) Grand Canyon visibility transport commission

The Administrator pursuant to subsection (c)(1) shall, within 12 months, establish a visibility transport commission for the region affecting the visibility of the Grand Canyon National Park.

(July 14, 1955, ch. 360, title I, §169B, as added Pub. L. 101–549, title VIII, §816, Nov. 15, 1990, 104 Stat. 2695; amended Pub. L. 117–286, §4(a)(269), Dec. 27, 2022, 136 Stat. 4335.)

Editorial Notes

REFERENCES IN TEXT

The Clean Air Act Amendments of 1990, referred to in subsec. (b), probably means Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

AMENDMENTS

2022—Subsec. (c)(4). Pub. L. 117–286 substituted "chapter 10 of title 5." for "the Federal Advisory Committee Act."

PART D—PLAN REQUIREMENTS FOR NONATTAINMENT AREAS

SUBPART 1—NONATTAINMENT AREAS IN GENERAL

§ 7501. Definitions

For the purpose of this part—

(1) REASONABLE FURTHER PROGRESS.—The term "reasonable further progress" means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.

(2) NONATTAINMENT AREA.—The term "nonattainment area" means, for any air pollutant, an area which is designated "nonattainment" with respect to that pollutant within the meaning of section 7407(d) of this title.

(3) The term "lowest achievable emission rate" means for any source, that rate of emissions which reflects—

(A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(4) The terms "modifications" and "modified" mean the same as the term "modification" as used in section 7411(a)(4) of this title.

(July 14, 1955, ch. 360, title I, §171, as added Pub. L. 95–95, title I, §129(b), Aug. 7, 1977, 91 Stat. 745; amended Pub. L. 101–549, title I, §102(a)(2), Nov. 15, 1990, 104 Stat. 2412.)

Editorial Notes

AMENDMENTS

1990—Pub. L. 101–549, §102(a)(2)(A), struck out "and section 7410(a)(2)(I) of this title" after "purpose of this part".

Pars. (1), (2). Pub. L. 101–549, §102(a)(2)(B), (C), amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

"(1) The term 'reasonable further progress' means annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under this part and section 7410(a)(2)(I) of this title and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 7502(a) of this title.

"(2) The term 'nonattainment area' means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under subparagraphs (A) through (C) of section 7407(d)(1) of this title."

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Part effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7502. Nonattainment plan provisions in general

(a) Classifications and attainment dates

(1) Classifications

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

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

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

(2) Attainment dates for nonattainment areas

(A) The attainment date for an area designated nonattainment with respect to a national primary ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment under section 7407(d) of this title, except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

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

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

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

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

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

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

(b) Schedule for plan submissions

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

(c) Nonattainment plan provisions

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

(1) In general

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

(2) RFP

Such plan provisions shall require reasonable further progress.

(3) Inventory

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

(4) Identification and quantification

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

(5) Permits for new and modified major stationary sources

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

(6) Other measures

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

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

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

(8) Equivalent techniques

Upon application by any State, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator.

(9) Contingency measures

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

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

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

(e) Future modification of standard

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

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

Editorial Notes

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), expeditious attainment of national ambient air quality standards; in subsec. (b), requisite provisions of plan; and in subsec. (c), attainment of applicable standard not later than July 1, 1987.

1977—Subsec. (b)(4). Pub. L. 95–190, § 14(a)(55), substituted "subsection (a)" for "paragraph (1)".

Subsec. (c). Pub. L. 95–190, § 14(a)(56), substituted "December 31" for "July 1".

Statutory Notes and Related Subsidiaries

NONATTAINMENT AREAS

Pub. L. 95–95, title I, § 129(a), Aug. 7, 1977, 91 Stat. 745, as amended by Pub. L. 95–190, § 14(b)(2), (3), Nov. 16, 1977, 91 Stat. 1404, provided that:

"(1) Before July 1, 1979, the interpretative regulation of the Administrator of the Environmental Protection Agency published in 41 Federal Register 55524–30, December 21, 1976, as may be modified by rule of the Administrator, shall apply except that the baseline to be used for determination of appropriate emission offsets under such regulation shall be the applicable implementation plan of the State in effect at the time of application for a permit by a proposed major stationary source (within the meaning of section 302 of the Clean Air Act) [section 7602 of this title].

"(2) Before July 1, 1979, the requirements of the regulation referred to in paragraph (1) shall be waived by the Administrator with respect to any pollutant if he determines that the State has—

"(A) an inventory of emissions of the applicable pollutant for each nonattainment area (as defined in section 171 of the Clean Air Act [section 7501 of this title]) that identifies the type, quantity, and source of such pollutant so as to provide information sufficient to demonstrate that the requirements of subparagraph (C) are being met;

"(B) an enforceable permit program which—

"(i) requires new or modified major stationary sources to meet emission limitations at least as stringent as required under the permit requirements referred to in paragraphs (2) and (3) of section 173 of the Clean Air Act [section 7503 of this title] (relating to lowest achievable emission rate and compliance by other sources) and which assures compliance with the annual reduction requirements of subparagraph (C); and

"(ii) requires existing sources to achieve such reduction in emissions in the area as may be obtained through the adoption, at a minimum of reasonably available control technology, and

"(C) a program which requires reductions in total allowable emissions in the area prior to July 1, 1979, so as to provide for the same level of emission reduction as would result from the application of the regulation referred to in paragraph (1).

The Administrator shall terminate such waiver if in his judgment the reduction in emissions actually being attained is less than the reduction on which the waiver was conditioned pursuant to subparagraph (C), or if the Administrator determines that the State is no longer in compliance with any requirement of this paragraph. Upon application by the State, the Administrator may reinstate a waiver terminated under the preceding sentence if he is satisfied that such State is in compliance with all requirements of this subsection.

"(3) Operating permits may be issued to those applicants who were properly granted construction permits, in accordance with the law and applicable regulations in effect at the time granted, for construction of a new or modified source in areas exceeding national primary air quality standards on or before the date of the enactment of this Act [Aug. 7, 1977] if such construction permits were granted prior to the date of the enactment of this Act and the person issued any such permit is able to demonstrate that the emissions from the source will be within the limitations set forth in such construction permit."

STATE IMPLEMENTATION PLAN REVISION

Pub. L. 95–95, title I, § 129(c), Aug. 7, 1977, 91 Stat. 750, as amended by Pub. L. 95–190, § 14(b)(4), Nov. 16, 1977, 91 Stat. 1405, provided that: "Notwithstanding the requirements of section 406(d)(2) [set out as an Effective Date of 1977 Amendment note under section 7401 of this title] (relating to date required for submission of certain implementation plan revisions), for purposes of section 110(a)(2) of the Clean Air Act [section 7410(a)(2) of this title] each State in which there is any nonattainment area (as defined in part D of title I of the Clean Air Act) [this part] shall adopt and submit an implementation plan revision which meets the requirements of section 110(a)(2)(I) [section 7410(a)(2)(I) of this title] and part D of title I of the Clean Air Act [this part] not later than January 1, 1979. In the case of any State for which a plan revision adopted and submitted before such date has made the demonstration required under section 172(a)(2) of the Clean Air Act [subsec. (a)(2) of this section] (respecting impossibility of attainment before 1983), such State shall adopt and submit to the Administrator a plan revision before July 1, 1982, which meets the requirements of section 172(b) and (c) of such Act [subsecs. (b) and (c) of this section]."

§ 7503. Permit requirements

(a) In general

The permit program required by section 7502(b)(6)[1] of this title shall provide that permits to construct and operate may be issued if—

(1) in accordance with regulations issued by the Administrator for the determination of baseline emissions in a manner consistent with the assumptions underlying the applicable implementation plan approved under section 7410 of this title and this part, the permitting agency determines that—

(A) by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, such that total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources (as determined in accordance with the regulations under this paragraph) prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under section 7502 of this title) reasonable further progress (as defined in section 7501 of this title); or

(B) in the case of a new or modified major stationary source which is located in a zone (within the nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 7502(c) of this title;

(2) the proposed source is required to comply with the lowest achievable emission rate;

(3) the owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in such State are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this chapter; and[2]

(4) the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this part; and

(5) an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Any emission reductions required as a precondition of the issuance of a permit under paragraph (1) shall be federally enforceable before such permit may be issued.

(b) Prohibition on use of old growth allowances

Any growth allowance included in an applicable implementation plan to meet the requirements of section 7502(b)(5) of this title (as in effect immediately before November 15, 1990) shall not be valid for use in any area that received or receives a notice under section 7410(a)(2)(H)(ii) of this title (as in effect immediately before November 15, 1990) or under section 7410(k)(1) of this title that its applicable implementation plan containing such allowance is substantially inadequate.

(c) Offsets

(1) The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this part for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the State may allow the owner or operator of a source to obtain such emission reductions in another nonattainment area if (A) the other area has an equal or higher nonattainment classification than the area in which the source is located and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located. Such emission reductions shall be, by the time a new or modified source commences operation, in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(2) Emission reductions otherwise required by this chapter shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by this chapter shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of paragraph (1).

[1] See References in Text note below.

[2] So in original. The word "and" probably should not appear.

Editorial Notes

AMENDMENTS

2022—Subsec. (b)(2). Pub. L. 117–286 substituted "chapter 10 of title 5." for "the Federal Advisory Committee Act (5 U.S.C. App.)."

§ 7507. New motor vehicle emission standards in nonattainment areas

Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—

(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a "third vehicle") or otherwise create such a "third vehicle".

(July 14, 1955, ch. 360, title I, § 177, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 750; amended Pub. L. 101–549, title II, § 232, Nov. 15, 1990, 104 Stat. 2529.)

Editorial Notes

AMENDMENTS

1990—Pub. L. 101–549 added sentence at end prohibiting States from limiting or prohibiting sale or manufacture of new vehicles or engines certified in California as having met California standards and from taking any actions where effect of those actions would be to create a "third vehicle".

§ 7508. Guidance documents

The Administrator shall issue guidance documents under section 7408 of this title for purposes of assisting States in implementing requirements of this part respecting the lowest achievable emission rate. Such a document shall be published not later than nine months after August 7, 1977, and shall be revised at least every two years thereafter.

(July 14, 1955, ch. 360, title I, § 178, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 750.)

§ 7509. Sanctions and consequences of failure to attain

(a) State failure

For any implementation plan or plan revision required under this part (or required in response to a finding of substantial inadequacy as described in section 7410(k)(5) of this title), if the Administrator—

(1) finds that a State has failed, for an area designated nonattainment under section 7407(d) of this title, to submit a plan, or to submit 1 or more of the elements (as determined by the Administrator) required by the provisions of this chapter applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under section 7410(k) of this title,

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

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

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

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

unless such deficiency has been corrected within 18 months after the finding, disapproval, or determination referred to in paragraphs (1), (2), (3), and (4), one of the sanctions referred to in subsection (b) shall apply, as selected by the Administrator, until the Administrator determines that the State has come into compliance, except that if the Administrator finds a lack of good faith, sanctions under both paragraph (1) and paragraph (2) of subsection (b) shall apply until the Administrator determines that the State has come into compliance. If the Administrator has selected one of such sanctions and the deficiency has not been corrected within 6 months thereafter, sanctions under both paragraph (1) and paragraph (2) of subsection (b) shall apply until the Administrator determines that the State has come into compliance. In addition to any other sanction applicable as provided in this section, the Administrator may withhold all or part of the grants for support of air pollution planning and control programs that the Administrator may award under section 7405 of this title.

(b) Sanctions

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

(1) Highway sanctions

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

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

(i) capital programs for public transit;

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

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

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

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

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

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

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

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

(2) Offsets

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

(c) Notice of failure to attain

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

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

(d) Consequences for failure to attain

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

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

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

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

§ 7509a. International border areas

(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 the[1] 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

[1] So in original. Probably should be "this".

106 of such amendments [enacting sections 7514 and 7514a of this title] (relating to additional provisions for areas designated as nonattainment for sulfur oxides, nitrogen dioxide, and lead) shall not apply with respect to the production of and equipment used in the exploration, production, development, storage or processing of—

"(1) oil from a stripper well property, within the meaning of the June 1979 energy regulations (within the meaning of section 4996(b)(7) of the Internal Revenue Code of 1986 [26 U.S.C. 4996(b)(7)], as in effect before the repeal of such section); and

"(2) stripper well natural gas, as defined in section 108(b) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3318(b)).[,]

except to the extent that provisions of such amendments cover areas designated as Serious pursuant to part D of title I of the Clean Air Act [this part] and having a population of 350,000 or more, or areas designated as Severe or Extreme pursuant to such part D."

§7511a. Plan submissions and requirements

(a) Marginal Areas

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

(1) Inventory

Within 2 years after November 15, 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 7502(c)(3) of this title, in accordance with guidance provided by the Administrator.

(2) Corrections to the State implementation plan

Within the periods prescribed in this paragraph, the State shall submit a revision to the State implementation plan that meets the following requirements—

(A) Reasonably available control technology corrections

For any Marginal Area (or, within the Administrator's discretion, portion thereof) the State shall submit, within 6 months of the date of classification under section 7511(a) of this title, a revision that includes such provisions to correct requirements in (or add requirements to) the plan concerning reasonably available control technology as were required under section 7502(b) of this title (as in effect immediately before November 15, 1990), as interpreted in guidance issued by the Administrator under section 7408 of this title before November 15, 1990.

(B) Savings clause for vehicle inspection and maintenance

(i) For any Marginal Area (or, within the Administrator's discretion, portion thereof), the plan for which already includes, or was required by section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) to have included, a specific schedule for implementation of a vehicle emission control inspection and maintenance program, the State shall submit, immediately after November 15, 1990, a revision that includes any provisions necessary to provide for a vehicle inspection and maintenance program of no less stringency than that of either the program defined in House Report Numbered 95-294, 95th Congress, 1st Session, 281-291 (1977) as interpreted in guidance of the Administrator issued pursuant to section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) or the program already included in the plan, whichever is more stringent.

(ii) Within 12 months after November 15, 1990, the Administrator shall review, revise, update, and republish in the Federal Register the guidance for the States for motor vehicle inspection and maintenance programs required by this chapter, taking into consideration the Administrator's investigations and audits of such program. The guidance shall, at a minimum, cover the frequency of inspections, the types of vehicles to be inspected (which shall include leased vehicles that are registered in the nonattainment area), vehicle maintenance by owners and operators, audits by the State, the test method and measures, including whether centralized or decentralized, inspection methods and procedures, quality of inspection, components covered, assurance that a vehicle subject to a recall notice from a manufacturer has complied with that notice, and effective implementation and enforcement, including ensuring that any retesting of a vehicle after a failure shall include proof of corrective action and providing for denial of vehicle registration in the case of tampering or misfueling. The guidance which shall be incorporated in the applicable State implementation plans by the States shall provide the States with continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer. No later than 2 years after the Administrator promulgates regulations under section 7521(m)(3) of this title (relating to emission control diagnostics), the State shall submit a revision to such program to meet any requirements that the Administrator may prescribe under that section.

(C) Permit programs

Within 2 years after November 15, 1990, the State shall submit a revision that includes each of the following:

(i) Provisions to require permits, in accordance with sections 7502(c)(5) and 7503 of this title, for the construction and operation of each new or modified major stationary source (with respect to ozone) to be located in the area.

(ii) Provisions to correct requirements in (or add requirements to) the plan concerning permit programs as were required under section 7502(b)(6) of this title (as in effect immediately before November 15, 1990), as interpreted in regulations of the Administrator promulgated as of November 15, 1990.

(3) Periodic inventory

(A) General requirement

No later than the end of each 3-year period after submission of the inventory under paragraph (1) until the area is redesignated to attainment, the State shall submit a revised inventory meeting the requirements of subsection (a)(1).

(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] So in original. Probably should be "subparagraph".

(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) 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.

(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) (concerning corrections to implementation plans prescribed under guidance by the Administrator).

(iv) Measures required under subsection (a)(2)(B) 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) (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) (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

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

[3] So in original. Probably should be "increased".

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) 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) 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) (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), that exceed the 15-percent amount of reductions required under subsection (b)(1)(A).

(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)), 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).

(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 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, including all measures necessary to make the use of clean alternative fuels in clean-fuel vehicles (as defined in part C of subchapter II) 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.

(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, 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, 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.

(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), 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) (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

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

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) (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), 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) (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) (relating to reductions of less than 3 percent), the provisions of paragraphs[6] (6), (7) and (8) of subsection (c) (relating to de minimus[7] rule and modification of sources), and the provisions of clause (ii) of subsection (b)(1)(A) (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

[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".

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. 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) 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), 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).

Any reference to the term "attainment date" in subsection (b), (c), or (d) 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) and the corresponding requirements of subsections (c)(2)(B) and (C), (d), and (e). 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.

(July 14, 1955, ch. 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.)

Editorial Notes

References in Text

The Natural Gas Policy Act of 1978, referred to in subsec. (e)(3), is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350. Title III of the Act is classified generally to subchapter III (§ 3361 et seq.) of chapter 60 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

Amendments

1995—Subsec. (d)(1)(B). Pub. L. 104–70 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Within 2 years after November 15, 1990, the State shall submit a revision requiring employers in such area to implement programs to reduce work-related vehicle trips and miles traveled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(f) of this title and shall, at a minimum, require that each employer of 100 or more persons in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods by not less than 25 percent above the average vehicle occupancy for all such trips in the area at the time the revision is submitted. 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. The revision shall provide that each employer subject to a vehicle occupancy requirement shall submit a compliance plan within 2 years after the date the revision is submitted which shall convincingly demonstrate compliance with the requirements of this paragraph not later than 4 years after such date."

Statutory Notes and Related Subsidiaries

Moratorium on Certain Emissions Testing Requirements

Pub. L. 104–59, title III, § 348, Nov. 28, 1995, 109 Stat. 617, provided that:

"(a) In General.—The Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the 'Administrator') shall not require adoption or implementation by a State of a test-only I/M240 enhanced vehicle inspection and maintenance program as a means of compliance with section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a), but the Administrator may approve such a program if a State chooses to adopt the program as a means of compliance with such section.

"(b) LIMITATION ON PLAN DISAPPROVAL.—The Administrator shall not disapprove or apply an automatic discount to a State implementation plan revision under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a) on the basis of a policy, regulation, or guidance providing for a discount of emissions credits because the inspection and maintenance program in such plan revision is decentralized or a test-and-repair program.

"(c) EMISSIONS REDUCTION CREDITS.—

"(1) STATE PLAN REVISION; APPROVAL.—Within 120 days of the date of the enactment of this subsection [Nov. 28, 1995], a State may submit an implementation plan revision proposing an interim inspection and maintenance program under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a). The Administrator shall approve the program based on the full amount of credits proposed by the State for each element of the program if the proposed credits reflect good faith estimates by the State and the revision is otherwise in compliance with such Act. If, within such 120-day period, the State submits to the Administrator proposed revisions to the implementation plan, has all of the statutory authority necessary to implement the revisions, and has proposed a regulation to make the revisions, the Administrator may approve the revisions without regard to whether or not such regulation has been issued as a final regulation by the State.

"(2) EXPIRATION OF INTERIM APPROVAL.—The interim approval shall expire on the earlier of (A) the last day of the 18-month period beginning on the date of the interim approval, or (B) the date of final approval. The interim approval may not be extended.

"(3) FINAL APPROVAL.—The Administrator shall grant final approval of the revision based on the credits proposed by the State during or after the period of interim approval if data collected on the operation of the State program demonstrates that the credits are appropriate and the revision is otherwise in compliance with the Clean Air Act [42 U.S.C. 7401 et seq.].

"(4) BASIS OF APPROVAL; NO AUTOMATIC DISCOUNT.—Any determination with respect to interim or full approval shall be based on the elements of the program and shall not apply any automatic discount because the program is decentralized or a test-and-repair program."

§ 7511b. Federal ozone measures

(a) Control techniques guidelines for VOC sources

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

(b) Existing and new CTGS

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

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

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

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

(c) Alternative control techniques

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

(d) Guidance for evaluating cost-effectiveness

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

(e) Control of emissions from certain sources

(1) Definitions

For purposes of this subsection—

(A) Best available controls

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

(B) Consumer or commercial product

The term "consumer or commercial product" means any substance, product (including paints, coatings, and solvents), or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of volatile organic compounds. The term does not include fuels or fuel additives regulated under section 7545 of this title, or motor vehicles, non-road vehicles, and non-road engines as defined under section 7550 of this title.

(C) Regulated entities

The term "regulated entities" means—

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

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

(2) Study and report

(A) Study

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

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

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

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

(B) Consideration of certain factors

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

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

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

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

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

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

(3) Regulations to require emission reductions

(A) In general

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

(B) Regulated entities

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

(C) Use of CTGS

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

(4) Systems of regulation

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

(5) Special fund

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

(6) Enforcement

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

(7) State administration

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

(8) Size, etc.

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

(9) State consultation

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

(f) Tank vessel standards

(1) Schedule for standards

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

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

(2) Regulations on equipment safety

Within 6 months after November 15, 1990, the Secretary of the Department in which the Coast Guard is operating shall issue regulations to ensure the safety of the equipment and operations which are to control emissions from the loading and unloading of tank vessels, under section 3703 of title 46 and section 1225[2] of title 33. The standards promulgated by the Administrator under paragraph (1) and the regulations issued by a State or political subdivision regarding emissions from the loading and unloading of tank vessels shall be consistent with the regulations regarding safety of the Department in which the Coast Guard is operating.

(3) Agency authority

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

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

(4) State or local standards

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

(5) Enforcement

Any standard established under paragraph (1)(A) shall be treated, for purposes of enforce-

[1] So in original. Probably should be capitalized.

[2] See References in Text note below.

ment of this chapter, as a standard under section 7411 of this title and any violation of such standard shall be treated as a violation of a requirement of section 7411(e) of this title.

(g) Ozone design value study

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

(h) Vehicles entering ozone nonattainment areas

(1) Authority regarding ozone inspection and maintenance testing

(A) In general

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

(B) Applicability

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

(2) Sanctions for violations

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

(3) State election

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

(4) Alternative approach

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

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

(i) related to emissions of air pollutants;

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

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

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

(5) Definition of covered ozone nonattainment area

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

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

Editorial Notes

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 1225 of title 33, referred to in subsec. (f)(2), was repealed by Pub. L. 115–282, title IV, § 402(e), Dec. 4, 2018, 132 Stat. 4264. See Transitional and Savings Provisions note preceding section 101 of Title 46, Shipping, and section 70011 of Title 46.

AMENDMENTS

1998—Subsec. (h). Pub. L. 105–286 added subsec. (h).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT; PUBLICATION OF PROHIBITION

Pub. L. 105–286, § 3, Oct. 27, 1998, 112 Stat. 2774, provided that:

"(a) IN GENERAL.—The amendment made by section 2 [amending this section] takes effect 180 days after the date of the enactment of this Act [Oct. 27, 1998]. Nothing in that amendment shall require action that is inconsistent with the obligations of the United States under any international agreement.

"(b) INFORMATION.—As soon as practicable after the date of the enactment of this Act, the appropriate agency of the United States shall distribute information to publicize the prohibition set forth in the amendment made by section 2."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7511c. Control of interstate ozone air pollution

(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

[1] So in original. Probably should not be capitalized.

[2] So in original. Probably should be "this".

(d) CO milestone

(1) Milestone demonstration

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

(2) Adequacy of demonstration

A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) Failure to meet emission reduction milestone

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

(e) Multi-State CO nonattainment areas

(1) Coordination among States

Each State in which there is located a portion of a single nonattainment area for carbon monoxide which covers more than one State ("multi-State nonattainment area") shall take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned. The Administrator may not approve any revision of a State implementation plan submitted under this part for a State in which part of a multi-State nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

(2) Failure to demonstrate attainment

If any State in which there is located a portion of a multi-State nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for carbon monoxide in that portion within the period required under this part the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all measures required under this section (relating to plan submissions for carbon monoxide nonattainment areas). If the Administrator makes such finding, in the portion of the nonattainment area within the State submitting such petition, no sanction shall be imposed under section 7509 of this title or under any other provision of this chapter, by reason of the failure to make such demonstration.

(f) Reclassified areas

Each State containing a carbon monoxide nonattainment area reclassified under section 7512(b)(2) of this title shall meet the requirements of subsection (b) of this section, as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than the attainment date) where such deadlines are shown to be infeasible.

(g) Failure of Serious Area to attain standard

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

(July 14, 1955, ch. 360, title I, § 187, as added Pub. L. 101–549, title I, § 104, Nov. 15, 1990, 104 Stat. 2454.)

Statutory Notes and Related Subsidiaries

MORATORIUM ON CERTAIN EMISSIONS TESTING REQUIREMENTS

For provisions prohibiting Administrator of Environmental Protection Agency from requiring adoption or implementation by State of test-only I/M240 enhanced vehicle inspection and maintenance program as means of compliance with this section, with further provisions relating to plan disapproval and emissions reduction credits, see section 348 of Pub. L. 104–59, set out as a note under section 7511a of this title.

SUBPART 4—ADDITIONAL PROVISIONS FOR PARTICULATE MATTER NONATTAINMENT AREAS

§ 7513. Classifications and attainment dates

(a) Initial classifications

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

(b) Reclassification as Serious

(1) Reclassification before attainment date

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

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

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

(2) Reclassification upon failure to attain

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

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

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

(c) Attainment dates

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

(1) Moderate Areas

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

(2) Serious Areas

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

(d) Extension of attainment date for Moderate Areas

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

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

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

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

(e) Extension of attainment date for Serious Areas

Upon application by any State, the Administrator may extend the attainment date for a Serious Area beyond the date specified under subsection (c), if attainment by the date established under subsection (c) would be impracticable, the State has complied with all requirements and commitments pertaining to that area in the implementation plan, and the State demonstrates to the satisfaction of the Administrator that the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area. At the time of such application, the State must submit a revision to the implementation plan that includes a demonstration of attainment by the most expeditious alternative date practicable. In determining whether to grant an extension, and the appropriate length of time for any such extension, the Administrator may consider the nature and extent of nonattainment, the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and transboundary emissions from foreign countries), the population exposed to concentrations in excess of the standard, the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and the technological and economic feasibility of various control measures. The Administrator may not approve an extension until the State submits an attainment demonstration for the area. The Administrator may grant at most one such extension for an area, of no more than 5 years.

(f) Waivers for certain areas

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

[1] So in original. Probably should be "subsection".

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

§ 7513a. Plan provisions and schedules for plan submissions

(a) Moderate Areas

(1) Plan provisions

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

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

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

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

(2) Schedule for plan submissions

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

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

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

(b) Serious Areas

(1) Plan provisions

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

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

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

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

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

(2) Schedule for plan submissions

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

(3) Major sources

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

(c) Milestones

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

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

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

(d) Failure to attain

In the case of a Serious PM–10 nonattainment area in which the PM–10 standard is not attained by the applicable attainment date, the State in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable at-

[1] So in original. Probably should be "subsection".

tainment date, plan revisions which provide for attainment of the PM–10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

(e) PM–10 precursors

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

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

§ 7513b. Issuance of RACM and BACM guidance

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

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

SUBPART 5—ADDITIONAL PROVISIONS FOR AREAS DESIGNATED NONATTAINMENT FOR SULFUR OXIDES, NITROGEN DIOXIDE, OR LEAD

§ 7514. Plan submission deadlines

(a) Submission

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

(b) States lacking fully approved State implementation plans

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

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

§ 7514a. Attainment dates

(a) Plans under section 7514(a)

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

(b) Plans under section 7514(b)

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

(c) Inadequate plans

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

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

SUBPART 6—SAVINGS PROVISIONS

§ 7515. General savings clause

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, ch. 360, title I, § 193, as added Pub. L. 101–549, title I, § 108(*l*), Nov. 15, 1990, 104 Stat. 2469.)

those facilities, together with the names and addresses of the persons who have been convicted of such offenses. Whenever the Administrator determines that the condition which gave rise to a conviction has been corrected, he shall promptly remove the facility and the name and address of the person concerned from the list.

SEC. 3. *Contracts, Grants, or Loans.* (a) Except as provided in section 8 of this Order, no Federal agency shall enter into any contract for the procurement of goods, materials, or services which is to be performed in whole or in part in a facility then designated by the Administrator pursuant to section 2.

(b) Except as provided in section 8 of this Order, no Federal agency authorized to extend Federal assistance by way of grant, loan, or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

SEC. 4. *Procurement, Grant, and Loan Regulations.* The Federal Procurement Regulations, the Armed Services Procurement Regulations, and to the extent necessary, any supplemental or comparable regulations issued by any agency of the Executive Branch shall, following consultation with the Administrator, be amended to require, as a condition of entering into, renewing, or extending any contract for the procurement of goods, materials, or services or extending any assistance by way of grant, loan, or contract, inclusion of a provision requiring compliance with the Air Act, the Water Act, and standards issued pursuant thereto in the facilities in which the contract is to be performed, or which are involved in the activity or program to receive assistance.

SEC. 5. *Rules and Regulations.* The Administrator shall issue such rules, regulations, standards, and guidelines as he may deem necessary or appropriate to carry out the purposes of this Order.

SEC. 6. *Cooperation and Assistance.* The head of each Federal agency shall take such steps as may be necessary to insure that all officers and employees of this agency whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the provisions of this Order. In addition to any other appropriate action, such officers and employees shall report promptly any condition in a facility which may involve noncompliance with the Air Act or the Water Act or any rules, regulations, standards, or guidelines issued pursuant to this Order to the head of the agency, who shall transmit such reports to the Administrator.

SEC. 7. *Enforcement.* The Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever he becomes aware of a breach of any provision required, under the amendments issued pursuant to section 4 of this Order, to be included in a contract or other agreement.

SEC. 8. *Exemptions—Reports to Congress.* (a) Upon a determination that the paramount interest of the United States so requires—

(1) The head of a Federal agency may exempt any contract, grant, or loan, and, following consultation with the Administrator, any class of contracts, grants or loans from the provisions of this Order. In any such case, the head of the Federal agency granting such exemption shall (A) promptly notify the Administrator of such exemption and the justification therefor; (B) review the necessity for each such exemption annually; and (C) report to the Administrator annually all such exemptions in effect. Exemptions granted pursuant to this section shall be for a period not to exceed one year. Additional exemptions may be granted for periods not to exceed one year upon the making of a new determination by the head of the Federal agency concerned.

(2) The Administrator may, by rule or regulation, exempt any or all Federal agencies from any or all of the provisions of this Order with respect to any class or classes of contracts, grants, or loans, which (A) involve less than specified dollar amounts, or (B) have a minimal potential impact upon the environment, or (C) involve persons who are not prime contractors or direct recipients of Federal assistance by way of contracts, grants, or loans.

(b) Federal agencies shall reconsider any exemption granted under subsection (a) whenever requested to do so by the Administrator.

(c) The Administrator shall annually notify the President and the Congress of all exemptions granted, or in effect, under this Order during the preceding year.

SEC. 9. *Related Actions.* The imposition of any sanction or penalty under or pursuant to this Order shall not relieve any person of any legal duty to comply with any provisions of the Air Act or the Water Act.

SEC. 10. *Applicability.* This Order shall not apply to contracts, grants, or loans involving the use of facilities located outside the United States.

SEC. 11. *Uniformity.* Rules, regulations, standards, and guidelines issued pursuant to this order and section 508 of the Water Act [33 U.S.C. 1368] shall, to the maximum extent feasible, be uniform with regulations issued pursuant to this order, Executive Order No. 11602 of June 29, 1971 [formerly set out above], and section 306 of the Air Act [this section].

SEC. 12. *Order Superseded.* Executive Order No. 11602 of June 29, 1971, is hereby superseded.

RICHARD NIXON.

§ 7607. Administrative proceedings and judicial review

(a) Administrative subpenas; confidentiality; witnesses

In connection with any determination under section 7410(f) of this title, or for purposes of obtaining information under section 7521(b)(4)[1] or 7545(c)(3) of this title, any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the[2] 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),,[3] 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

[1] See References in Text note below.

[2] So in original. Probably should be "this".

[3] So in original.

this subparagraph,[4] 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,,[3] 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)[1] 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) 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[5] 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)[6] 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 (relating to control of acid deposition),

(H) promulgation or revision of regulations pertaining to primary nonferrous smelter or-

[4] So in original. Probably should be "subsection,".

[5] So in original. The word "to" probably should not appear.

[6] So in original. There are no subpars. (D) and (F) of section 7412(g)(1) of this title.

ders 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 (relating to stratosphere and ozone protection),

(J) promulgation or revision of regulations under part C of subchapter I (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,

(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 (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)). 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)) 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[7] 7407(d), 7502(a), 7511(a) and (b), and 7512(a) and (b) of this title.

(July 14, 1955, ch. 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,

[7] So in original. Probably should be "sections".

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.)

Editorial Notes

References in Text

Section 7521(b)(4) of this title, referred to in subsec. (a), was repealed by Pub. L. 101–549, title II, § 230(2), Nov. 15, 1990, 104 Stat. 2529.

Section 7521(b)(5) of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 101–549, title II, § 230(3), Nov. 15, 1990, 104 Stat. 2529.

Section 1857c–10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977), referred to in subsec. (b)(1), was in the original "section 119(c)(2)(A), (B), or (C) (as in effect before the date of enactment of the Clean Air Act Amendments of 1977)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, § 3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413(d) of this title was subsequently amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Part C of subchapter I, referred to in subsec. (d)(1)(J), was in the original "subtitle C of title I", and was translated as reading "part C of title I" to reflect the probable intent of Congress, because title I does not contain subtitles.

Codification

In subsec. (h), "subchapter II of chapter 5 of title 5" was substituted for "the Administrative Procedures Act" on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 1857h–5 of this title.

Prior Provisions

A prior section 307 of act July 14, 1955, was renumbered section 314 by Pub. L. 91–604 and is classified to section 7614 of this title.

Another prior section 307 of act July 14, 1955, ch. 360, title III, formerly § 14, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401, was renumbered section 307 by Pub. L. 89–272, renumbered section 310 by Pub. L. 90–148, and renumbered section 317 by Pub. L. 91–604, and is set out as a Short Title note under section 7401 of this title.

Amendments

1990—Subsec. (a). Pub. L. 101–549, § 703, struck out par. (1) designation at beginning, inserted provisions authorizing issuance of subpoenas and administration of oaths for purposes of investigations, monitoring, reporting requirements, entries, compliance inspections, or administrative enforcement proceedings under this chapter, and struck out "or section 7521(b)(5)" after "section 7410(f)".

Subsec. (b)(1). Pub. L. 101–549, § 706(2), which directed amendment of second sentence by striking "under section 7413(d) of this title" immediately before "under section 7419 of this title", was executed by striking "under section 7413(d) of this title," before "under section 7419 of this title", to reflect the probable intent of Congress.

Pub. L. 101–549, § 706(1), inserted at end: "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."

Pub. L. 101–549, § 702(c), inserted "or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title," before "or any other final action of the Administrator".

Pub. L. 101–549, § 302(g), substituted "section 7412" for "section 7412(c)".

Subsec. (b)(2). Pub. L. 101–549, § 707(h), inserted sentence at end authorizing challenge to deferrals of performance of nondiscretionary statutory actions.

Subsec. (d)(1)(C). Pub. L. 101–549, § 110(5)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "the promulgation or revision of any standard of performance under section 7411 of this title or emission standard under section 7412 of this title,".

Subsec. (d)(1)(D), (E). Pub. L. 101–549, § 302(h), added subpar. (D) and redesignated former subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (d)(1)(F). Pub. L. 101–549, § 302(h), redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 101–549, § 110(5)(B), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "promulgation or revision of regulations pertaining to orders for coal conversion under section 7413(d)(5) of this title (but not including orders granting or denying any such orders),".

Subsec. (d)(1)(G), (H). Pub. L. 101–549, § 302(h), redesignated subpars. (F) and (G) as (G) and (H), respectively. Former subpar. (H) redesignated (I).

Subsec. (d)(1)(I). Pub. L. 101–549, § 710(b), which directed that subpar. (H) be amended by substituting "subchapter VI" for "part B of subchapter I", was executed by making the substitution in subpar. (I), to reflect the probable intent of Congress and the intervening redesignation of subpar. (H) as (I) by Pub. L. 101–549, § 302(h), see below.

Pub. L. 101–549, § 302(h), redesignated subpar. (H) as (I). Former subpar. (I) redesignated (J).

Subsec. (d)(1)(J) to (M). Pub. L. 101–549, § 302(h), redesignated subpars. (I) to (L) as (J) to (M), respectively. Former subpar. (M) redesignated (N).

Subsec. (d)(1)(N). Pub. L. 101–549, § 302(h), redesignated subpar. (M) as (N). Former subpar. (N) redesignated (O).

Pub. L. 101–549, § 110(5)(C), added subpar. (N) and redesignated former subpar. (N) as (U).

Subsec. (d)(1)(O) to (T). Pub. L. 101–549, § 302(h), redesignated subpars. (N) to (S) as (O) to (T), respectively. Former subpar. (T) redesignated (U).

Pub. L. 101–549, § 110(5)(C), added subpars. (O) to (T).

Subsec. (d)(1)(U). Pub. L. 101–549, § 302(h), redesignated subpar. (T) as (U). Former subpar. (U) redesignated (V).

Pub. L. 101–549, § 110(5)(C), redesignated former subpar. (N) as (U).

Subsec. (d)(1)(V). Pub. L. 101–549, § 302(h), redesignated subpar. (U) as (V).

Subsec. (h). Pub. L. 101–549, § 108(p), added subsec. (h).

1977—Subsec. (b)(1). Pub. L. 95–190 in text relating to filing of petitions for review in the United States Court of Appeals for the District of Columbia inserted provision respecting requirements under sections 7411 and 7412 of this title, and substituted provisions authorizing review of any rule issued under section 7413, 7419, or 7420 of this title, for provisions authorizing review of any rule or order issued under section 7420 of this title, relating to noncompliance penalties, and in text relating to filing of petitions for review in the United States Court of Appeals for the appropriate circuit inserted provision respecting review under section 7411(j), 7412(c), 7413(d), or 7419 of this title, provision authorizing review under section 1857c–10(c)(2)(A), (B), or (C) to the period prior to Aug. 7, 1977, and provisions authorizing review of denials or disapprovals by the Administrator under subchapter I of this chapter.

Pub. L. 95–95, §305(c), (h), inserted rules or orders issued under section 7420 of this title (relating to noncompliance penalties) and any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter to the enumeration of actions of the Administrator for which a petition for review may be filed only in the United States Court of Appeals for the District of Columbia, added the approval or promulgation by the Administrator of orders under section 7420 of this title, or any other final action of the Administrator under this chapter which is locally or regionally applicable to the enumeration of actions by the Administrator for which a petition for review may be filed only in the United States Court of Appeals for the appropriate circuit, inserted provision that petitions otherwise capable of being filed in the Court of Appeals for the appropriate circuit may be filed only in the Court of Appeals for the District of Columbia if the action is based on a determination of nationwide scope, and increased from 30 days to 60 days the period during which the petition must be filed.

Subsec. (d). Pub. L. 95–95, §305(a), added subsec. (d).

Subsec. (e). Pub. L. 95–95, §303(d), added subsec. (e).

Subsec. (f). Pub. L. 95–95, §305(f), added subsec. (f).

Subsec. (g). Pub. L. 95–95, §305(g), added subsec. (g).

1974—Subsec. (b)(1). Pub. L. 93–319 inserted reference to the Administrator's action under section 1857c–10(c)(2)(A), (B), or (C) of this title or under regulations thereunder and substituted reference to the filing of a petition within 30 days from the date of promulgation, approval, or action for reference to the filing of a petition within 30 days from the date of promulgation or approval.

1971—Subsec. (a)(1). Pub. L. 92–157 substituted reference to section "7545(c)(3)" for "7545(c)(4)" of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1977 AMENDMENT

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.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-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 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 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 Date of 1977 Amendment note under section 7401 of this title.

§ 7608. Mandatory licensing

Whenever the Attorney General determines, upon application of the Administrator—

(1) that—

(A) in the implementation of the requirements of section 7411, 7412, or 7521 of this title, a right under any United States letters patent, which is being used or intended for public or commercial use and not otherwise reasonably available, is necessary to enable any person required to comply with such limitation to so comply, and

(B) there are no reasonable alternative methods to accomplish such purpose, and

(2) that the unavailability of such right may result in a substantial lessening of competition or tendency to create a monopoly in any line of commerce in any section of the country,

the Attorney General may so certify to a district court of the United States, which may issue an order requiring the person who owns such patent to license it on such reasonable terms and conditions as the court, after hearing, may determine. Such certification may be made to the district court for the district in which the person owning the patent resides, does business, or is found.

(July 14, 1955, ch. 360, title III, §308, as added Pub. L. 91–604, §12(a), Dec. 31, 1970, 84 Stat. 1708.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 1857h–6 of this title.

PRIOR PROVISIONS

A prior section 308 of act July 14, 1955, was renumbered section 315 by Pub. L. 91–604 and is classified to section 7615 of this title.

Statutory Notes and Related Subsidiaries

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 paragraph (b) of this section when the Administrator becomes aware of applicability.

(2) *Plan components.* At a minimum, each mitigation plan developed under this paragraph shall contain provisions for the following:

(i) Public notification to and education programs for affected or potentially affected communities. Such notification and education programs shall apply whenever air quality concentrations exceed or are expected to exceed a national ambient air quality standard with an averaging time that is less than or equal to 24-hours.

(ii) Steps to identify, study and implement mitigating measures, including approaches to address each of the following:

(A) Measures to abate or minimize contributing controllable sources of identified pollutants.

(B) Methods to minimize public exposure to high concentrations of identified pollutants.

(C) Processes to collect and maintain data pertinent to the event.

(D) Mechanisms to consult with other air quality managers in the affected area regarding the appropriate responses to abate and minimize impacts.

(iii) Provisions for periodic review and evaluation of the mitigation plan and its implementation and effectiveness by the State and all interested stakeholders.

(A) With the submission of the initial mitigation plan according to the requirements in paragraph (b)(3) of this section that contains the elements in paragraph (b)(2) of this section, the State must:

(*1*) Document that a draft version of the mitigation plan was available for public comment for a minimum of 30 days;

(*2*) Submit the public comments it received along with its mitigation plan to the Administrator; and

(*3*) In its submission to the Administrator, for each public comment received, explain the changes made to the mitigation plan or explain why the State did not make any changes to the mitigation plan.

(B) The State shall specify in its mitigation plan the periodic review and evaluation process that it intends to follow for reviews following the initial review identified in paragraph (b)(2)(iii)(A) of this section.

(3) *Submission of mitigation plans.* All States subject to the provisions of paragraph (b) of this section shall, after notice and opportunity for public comment identified in paragraph (b)(2)(iii)(A) of this section, submit a mitigation plan to the Administrator for review and verification of the plan components identified in paragraph (b)(2) of this section.

(i) States shall submit their mitigation plans within 2 years of being notified that they are subject to the provisions of paragraph (b) of this section.

(ii) The Administrator shall review each mitigation plan developed according to the requirements in paragraph (b)(2) of this section and shall notify the submitting State upon completion of such review.

[81 FR 68282, Oct. 3, 2016]

Subpart Z—Provisions for Implementation of $PM_{2.5}$ National Ambient Air Quality Standards

SOURCE: 81 FR 58151, Aug. 24, 2016, unless otherwise noted.

§ 51.1000 Definitions.

The following definitions apply for purposes of this subpart. Any term not defined herein shall have the meaning as defined in 40 CFR 51.100 or Clean Air Act section 302.

Act means the Clean Air Act as codified at 42 U.S.C. 7401–7671q (2003).

Additional feasible measure is any control measure that otherwise meets the definition of "best available control measure" (BACM) but can only be implemented in whole or in part beginning 4 years after the date of reclassification of an area as Serious and no later than the statutory attainment date for the area.

Additional reasonable measure is any control measure that otherwise meets the definition of "reasonably available control measure" (RACM) but can only be implemented in whole or in part during the period beginning 4 years after the effective date of designation of a nonattainment area and no later than the end of the sixth calendar year following the effective date of designation of the area.

Applicable annual standard is the annual $PM_{2.5}$ NAAQS established, revised, or retained as a result of a particular $PM_{2.5}$ NAAQS review.

Applicable attainment date means the latest statutory date by which an area is required to attain a particular $PM_{2.5}$ NAAQS, unless the EPA has approved an attainment plan for the area to attain such NAAQS, in which case the applicable attainment date is the date approved under such attainment plan. If the EPA grants an extension of an approved attainment date, then the applicable attainment date for the area shall be the extended date.

Applicable 24-hour standard is the 24-hour $PM_{2.5}$ NAAQS established, revised, or retained as a result of a particular $PM_{2.5}$ NAAQS review.

Attainment projected inventory for the nonattainment area means the projected emissions of direct $PM_{2.5}$ and all $PM_{2.5}$ precursors on the projected attainment date for the area. This projected inventory includes sources included in the base year inventory for the nonattainment area revised to account for changes in direct $PM_{2.5}$ and all $PM_{2.5}$ precursors through implementation of the plan and any additional sources of such emissions expected within the boundaries of the nonattainment area by the projected attainment date for the area.

Average-season-day emissions means the sum of all emissions during the applicable season divided by the number of days in that season.

Base year inventory for the nonattainment area means the actual emissions of direct $PM_{2.5}$ and all $PM_{2.5}$ precursors from all sources within the boundaries of a nonattainment area in one of the 3 years used for purposes of designations or another technically appropriate year.

Best available control measure (BACM) is any technologically and economically feasible control measure that can be implemented in whole or in part within 4 years after the date of reclassification of a Moderate $PM_{2.5}$ nonattainment area to Serious and that generally can achieve greater permanent and enforceable emissions reductions in direct $PM_{2.5}$ emissions and/or emissions of $PM_{2.5}$ plan precursors from sources in the area than can be achieved through the implementation of RACM on the same source(s). BACM includes best available control technology (BACT).

Date of designation means the effective date of a $PM_{2.5}$ area designation as promulgated by the Administrator.

Date of reclassification means the effective date of a $PM_{2.5}$ area reclassification from Moderate to Serious as promulgated by the Administrator.

Direct $PM_{2.5}$ emissions means solid or liquid particles emitted directly from an air emissions source or activity, or reaction products of gases emitted directly from an air emissions source or activity which form particulate matter as they reach ambient temperatures. Direct $PM_{2.5}$ emissions include filterable and condensable $PM_{2.5}$ emissions composed of elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other organic or inorganic particles that exist or form through reactions as emissions reach ambient temperatures (including but not limited to crustal material, metals, and sea salt).

Implemented means adopted by the state, fully approved into the SIP by the EPA, and requiring expeditious compliance by affected sources with installation and/or operation of any equipment, control device, process change, or other emission reduction activity.

Major stationary source means any stationary source of air pollutant(s) that emits, or has the potential to emit 100 tons per year or more of direct $PM_{2.5}$ or any $PM_{2.5}$ precursor in any Moderate nonattainment area for the $PM_{2.5}$ NAAQS, or 70 tons per year or more of direct $PM_{2.5}$ or any $PM_{2.5}$ precursor in any Serious nonattainment area for the $PM_{2.5}$ NAAQS.

Mobile source means mobile sources as defined by 40 CFR 51.50.

Most stringent measure (MSM) is any permanent and enforceable control measure that achieves the most stringent emissions reductions in direct $PM_{2.5}$ emissions and/or emissions of $PM_{2.5}$ plan precursors from among those control measures which are either included in the SIP for any other NAAQS, or have been achieved in practice in any state, and that can feasibly be implemented in the relevant $PM_{2.5}$ NAAQS nonattainment area.

Nonpoint source means nonpoint sources as defined by 40 CFR 51.50.

$PM_{2.5}$ design value (DV) for a $PM_{2.5}$ nonattainment area is the highest of the 3-year average concentrations calculated for the ambient air quality monitors in the area, in accordance with 40 CFR part 50, appendix N.

$PM_{2.5}$ NAAQS are the fine particulate matter National Ambient Air Quality Standards codified at 40 CFR part 50.

$PM_{2.5}$ plan precursors are those $PM_{2.5}$ precursors required to be regulated in the applicable attainment plan and/or NNSR program.

$PM_{2.5}$ precursors are Sulfur dioxide (SO_2), Oxides of nitrogen (NO_X), Volatile organic compounds (VOC), and Ammonia (NH_3).

Point source means point sources as defined by 40 CFR 51.50.

Precursor demonstration means an optional set of analyses provided by a state that are designed to show that emissions of a particular $PM_{2.5}$ precursor do not contribute significantly to $PM_{2.5}$ levels that exceed the relevant $PM_{2.5}$ standard in a particular nonattainment area. The three types of precursor demonstrations provided in this rule are the comprehensive precursor demonstration, the major stationary source precursor demonstration, and the NNSR precursor demonstration.

Reasonable further progress (RFP) means such annual incremental reductions in emissions of direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors as are required for the purpose of ensuring attainment of the applicable $PM_{2.5}$ NAAQS in a nonattainment area by the applicable attainment date.

Reasonably available control measure (RACM) is any technologically and economically feasible measure that can be implemented in whole or in part within 4 years after the effective date of designation of a $PM_{2.5}$ nonattainment area and that achieves permanent and enforceable reductions in direct $PM_{2.5}$ emissions and/or $PM_{2.5}$ plan precursor emissions from sources in the area. RACM includes reasonably available control technology (RACT).

RFP projected emissions means the estimated emissions for direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors by source category or subcategory for the years in which quantitative milestones are due for a nonattainment area.

Subpart 1 means subpart 1 of part D of title I of the Act.

Subpart 4 means subpart 4 of part D of title I of the Act.

§51.1001 Applicability of part 51.

The provisions in subparts A through X of this part apply to areas for purposes of the $PM_{2.5}$ NAAQS to the extent they are not inconsistent with the provisions of this subpart.

§51.1002 Classifications and reclassifications.

(a) *Initial classification as Moderate $PM_{2.5}$ nonattainment area.* Any area designated nonattainment for a $PM_{2.5}$ NAAQS shall be classified at the time of such designation, by operation of law, as a Moderate $PM_{2.5}$ nonattainment area.

(b) *Reclassification as Serious $PM_{2.5}$ nonattainment area.* A Moderate nonattainment area shall be reclassified to Serious under the following circumstances:

(1) The EPA shall reclassify as Serious through notice-and-comment rulemaking any Moderate $PM_{2.5}$ nonattainment area that the EPA determines cannot practicably attain a particular $PM_{2.5}$ NAAQS by the applicable Moderate area attainment date.

(2) A Moderate $PM_{2.5}$ nonattainment area shall be reclassified by operation of law as a Serious nonattainment area if the EPA finds through notice-and-comment rulemaking that the area failed to attain a particular $PM_{2.5}$ NAAQS by the applicable Moderate area attainment date.

§51.1003 Attainment plan due dates and submission requirements.

(a) *Nonattainment areas initially classified as Moderate.* (1) For any area designated as nonattainment and initially classified as Moderate for a $PM_{2.5}$ NAAQS, the state(s) shall submit a Moderate area attainment plan that *the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date.* (1) For any Serious nonattainment area that fails to attain the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date, the state(s) shall submit a revised Serious area attainment plan that demonstrates that each year the area will achieve at least a 5 percent reduction in emissions of direct $PM_{2.5}$ or a 5 percent reduction in emissions of a $PM_{2.5}$ plan precursor based on the most recent emissions inventory for the area. The revised attainment plan shall meet the following requirements:

(i) Emissions inventory requirements set forth at § 51.1008(c)(1);

(ii) Emissions inventory requirements set forth at § 51.1008(c)(2);

(iii) Serious area attainment plan control strategy requirements set forth at § 51.1010;

(iv) Attainment demonstration and modeling requirements set forth at § 51.1011;

(v) Reasonable Further Progress (RFP) requirements set forth at § 51.1012;

(vi) Quantitative milestone requirements set forth at § 51.1013;

(vii) Contingency measure requirements set forth at § 51.1014; and

(viii) Nonattainment new source review plan requirements pursuant to § 51.165.

(2) The state(s) shall submit to the EPA the revised attainment plan meeting the requirements set forth at paragraphs (c)(1)(i) through (vii) of this section no later than 12 months from the applicable Serious area attainment date that was previously missed.

(d) Any attainment plan submitted to the EPA under this section shall establish motor vehicle emissions budgets for the projected attainment year for the area, if applicable. The state shall develop such budgets according to the requirements of the transportation conformity rule as they apply to $PM_{2.5}$ nonattainment areas (40 CFR part 93).

§ 51.1004 Attainment dates.

(a) The state shall submit a projected attainment date as part of its attainment plan submission under § 51.1003 for any $PM_{2.5}$ NAAQS nonattainment area located in whole or in part within its boundaries. The state shall justify the projected attainment date for each such nonattainment area (or portion of a nonattainment area) as part of the demonstration of attainment developed and submitted according to the requirements set forth at § 51.1011 and according to the following:

(1) Nonattainment areas initially classified as Moderate.

(i) Except for nonattainment areas that meet the criterion under paragraph (a)(1)(ii) of this section, the projected attainment date for a Moderate $PM_{2.5}$ nonattainment area shall be as expeditious as practicable through the implementation of all control measures required under § 51.1009. The attainment date may be as late as the end of the sixth calendar year after the effective date of designation if the state demonstrates that the implementation of the control measures that qualify as RACM, RACT, and additional reasonable measures, but that are not necessary for demonstrating attainment by the end of the sixth calendar year after the effective date of designation, will not collectively advance the attainment date by at least 1 year.

(ii) The projected attainment date for a Moderate $PM_{2.5}$ nonattainment area which the state demonstrates cannot practicably attain the applicable $PM_{2.5}$ NAAQS by the end of the sixth calendar year after the effective date of designation of the area with the implementation of all control measures required under § 51.1009 shall be the end of the sixth calendar year after the effective date of designation unless and until the area is reclassified as Serious according to § 51.1002.

(2) *Nonattainment areas reclassified to Serious.* (i) Except for nonattainment areas that meet the criterion under paragraph (a)(2)(ii) of this section, the projected attainment date for a Serious $PM_{2.5}$ nonattainment area shall be as expeditious as practicable with the implementation of all control measures required under § 51.1010 but no later than the end of the tenth calendar year after the effective date of designation.

(ii) A state that submits an attainment plan that demonstrates that a Serious $PM_{2.5}$ nonattainment area cannot practicably attain the $PM_{2.5}$

NAAQS by the end of the tenth calendar year following the effective date of designation of the area with the implementation of all control measures required under § 51.1010(a) must request an extension of the Serious area attainment date consistent with § 51.1005(b). The request must propose a projected attainment date for the nonattainment area that is as expeditious as practicable, but no later than the end of the fifteenth calendar year following the effective date of designation of the area.

(3) Serious nonattainment areas subject to CAA section 189(d) for failing to attain by the applicable Serious area attainment date. The projected attainment date for a Serious $PM_{2.5}$ nonattainment area that failed to attain the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date shall be as expeditious as practicable, but no later than 5 years following the effective date of the EPA's finding that the area failed to attain by the original Serious area attainment date, except that the Administrator may extend the attainment date to the extent the Administrator deems appropriate, for a period no greater than 10 years from the effective date of the EPA's determination that the area failed to attain, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

(b) Except for attainment plans that meet the conditions of paragraphs (a)(1)(ii) or (a)(3) of this section, the Administrator shall approve an attainment date at the same time and in the same manner in which the Administrator approves the attainment plan for the area.

(1) In accordance with paragraph (a)(1)(ii) of this section, if a state demonstrates that a Moderate $PM_{2.5}$ nonattainment area cannot practicably attain the $PM_{2.5}$ NAAQS by the end of the sixth calendar year following the effective date of designation of the area, the EPA shall proceed under the provisions of § 51.1002(b)(1) to reclassify the area to Serious through notice-and-comment rulemaking.

(2) [Reserved]

§ 51.1005 Attainment date extensions.

(a) *Nonattainment areas initially classified as Moderate.* (1) A state with a Moderate $PM_{2.5}$ nonattainment area may apply for a 1-year attainment date extension for the area if the following conditions are met in the calendar year that includes the applicable attainment date for the area:

(i) The state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan;

(ii) For an area designated nonattainment for a particular 24-hour $PM_{2.5}$ NAAQS for which the state seeks an attainment date extension, the 98th percentile 24-hour concentration at each monitor in the area for the calendar year that includes the applicable attainment date is less than or equal to the level of the applicable 24-hour standard (calculated according to the data analysis requirements in 40 CFR part 50, appendix N);

(iii) For an area designated nonattainment for a particular annual $PM_{2.5}$ NAAQS for which the state seeks an attainment date extension, the annual average concentration at each monitor in the area for the calendar year that includes the applicable attainment date is less than or equal to the level of the applicable annual standard (calculated according to the data analysis requirements in 40 CFR part 50, appendix N).

(2) The applicable implementation plan for a Moderate $PM_{2.5}$ nonattainment area for which a state seeks an attainment date extension is the plan submitted to the EPA to meet the requirements of § 51.1003(a).

(3) A Moderate area 1-year attainment date extension runs from January 1 to December 31 of the year following the year that includes the applicable attainment date.

(4) A state with a Moderate area that received an initial 1-year attainment date extension may apply for a second 1-year attainment date extension for the area if the state meets the conditions described in paragraph (a)(1) of this section for the first 1-year extension year.

(b) *Nonattainment areas reclassified as Serious.* (1) A state may apply for one attainment date extension not to exceed 5 years for a Serious nonattainment area if the following conditions are met:

(i) The state demonstrates that attainment of the applicable $PM_{2.5}$ NAAQS by the approved attainment date for the area would be impracticable or, in the absence of an approved attainment date, attainment of the applicable $PM_{2.5}$ NAAQS by the applicable statutory attainment date for the area would be impracticable;

(ii) The state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and,

(iii) The state demonstrates that the attainment plan for the area includes the most stringent measures (MSM) that are included in the attainment plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area consistent with § 51.1010(b).

(2) At the time of application for an attainment date extension, the state shall submit to the EPA a Serious area attainment plan that meets the following requirements:

(i) Base year and attainment projected emissions inventory requirements set forth at § 51.1008(b);

(ii) Most stringent measures (MSM) requirement described under paragraph (b)(1)(iii) of this section and § 51.1010(b), and best available control measures not previously submitted;

(iii) Attainment demonstration and modeling requirements set forth at § 51.1011 that justify the state's conclusion under paragraph (b)(1)(i) of this section, and that demonstrate attainment as expeditiously as practicable;

(iv) Reasonable Further Progress (RFP) requirements set forth at § 51.1012;

(v) Quantitative milestone requirements set forth at § 51.1013;

(vi) Contingency measure requirements set forth at § 51.1014; and,

(vii) Nonattainment new source review plan requirements pursuant to § 51.165.

(3) The applicable implementation plan for a Serious $PM_{2.5}$ nonattainment area for which a state seeks an attainment date extension under § 51.1004(a)(2)(ii) is the plan submitted to the EPA to meet the requirements set forth at § 51.1003(a).

(4) The applicable implementation plan for a Serious $PM_{2.5}$ nonattainment area for which a state seeks an attainment date extension under § 51.1004(a)(2)(i) is the plan submitted to the EPA to meet the requirements set forth at § 51.1003(b)(1).

(5) A state applying for an attainment date extension for a Serious nonattainment area under § 51.1004(a)(2)(ii) shall submit to the EPA a request for an extension at the same time as it submits the Serious area attainment plan due under § 51.1003(b)(1).

(6) A state applying for an attainment date extension for a Serious nonattainment area subsequent to submitting an initial Serious area attainment plan that demonstrated attainment of the NAAQS by the applicable attainment date consistent with § 51.1004(a)(2)(i) at the time of submission may apply for such an extension no later than 60 calendar days prior to the approved attainment date for the area or, in the absence of an approved attainment date, no later than 60 calendar days prior to the applicable statutory attainment date for the area.

(c) *Serious nonattainment areas subject to CAA section 189(d) for failing to attain by the applicable Serious area attainment date.* If a Serious area fails to attain a particular $PM_{2.5}$ NAAQS by the applicable Serious area attainment date, the area is then subject to the requirements of section 189(d) of the Act, and, for this reason, the state is prohibited from requesting an extension of the applicable Serious area attainment date for such area.

(d) For any attainment date extension request submitted pursuant to this section, the requesting state (or states) shall submit a written request and evidence of compliance with these regulations which includes both of the following:

(1) Evidence that all control measures submitted in the applicable attainment plan have been implemented, and

(2) Evidence that the area has made emission reduction progress that represents reasonable further progress toward timely attainment of the applicable $PM_{2.5}$ NAAQS.

(e) For a $PM_{2.5}$ nonattainment area located in two or more states or jurisdictions, all states and/or jurisdictions in which such area is located shall submit separate attainment date extension requests for the area consistent with the requirements set forth at paragraph (d) of this section.

§ 51.1006 Optional $PM_{2.5}$ precursor demonstrations

(a) A state may elect to submit to the EPA one or more precursor demonstrations for a specific nonattainment area. The analyses conducted in support of any precursor demonstration must be based on precursor emissions attributed to sources and activities in the nonattainment area.

(1) A comprehensive precursor demonstration must show that emissions of a particular precursor from all existing stationary, area, and mobile sources located in the nonattainment area do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area. If the state chooses to conduct a comprehensive precursor demonstration, the state must conduct the analysis in paragraph (a)(1)(i) of this section and it may conduct the analysis in paragraph (a)(1)(ii) of this section.

(i) *Concentration-based contribution analysis.* The comprehensive precursor demonstration must evaluate the contribution of a particular precursor to $PM_{2.5}$ levels in the area. If the contribution of the precursor to $PM_{2.5}$ levels in the area is not significant, based on the facts and circumstances of the area, then the EPA may approve the demonstration.

(ii) *Sensitivity-based contribution analysis.* If the concentration-based contribution analysis does not support a finding of insignificant contribution, based on the facts and circumstances of the area, then the state may choose to submit an analysis evaluating the sensitivity of $PM_{2.5}$ levels in the area to a decrease in emissions of the precursor in order to determine whether the resulting air quality changes are significant. If the estimated air quality changes determined in the sensitivity analysis are not significant, based on the facts and circumstances of the area, then the EPA may approve the demonstration.

(iii) If a comprehensive precursor demonstration is approved by the EPA, the state will not be required to control emissions of the relevant precursor from existing sources in the current attainment plan.

(2) A major stationary source precursor demonstration must show that emissions of a particular precursor from all existing major stationary sources located in the nonattainment area do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area. If the state chooses to conduct a major stationary source precursor demonstration, the state must conduct the analysis in paragraph (a)(2)(i) of this section and it may conduct the analysis in paragraph (a)(2)(ii) of this section.

(i) *Concentration-based contribution analysis.* The major stationary source precursor demonstration must evaluate the contribution of major source emissions of a particular precursor to $PM_{2.5}$ levels in the area. If the contribution of the precursor to $PM_{2.5}$ levels in the area is not significant, based on the facts and circumstances of the area, then the EPA may approve the demonstration.

(ii) *Sensitivity-based contribution analysis.* If the concentration-based contribution analysis does not support a finding of insignificant contribution, based on the facts and circumstances of the area, then the state may choose to submit an analysis evaluating the sensitivity of $PM_{2.5}$ levels in the area to a decrease in emissions of the precursor in order to determine whether the resulting air quality changes are significant. If the estimated air quality changes determined in the sensitivity analysis are not significant, based on the facts and circumstances of the area, then the EPA may approve the demonstration.

(iii) If a major stationary source precursor demonstration is approved by the EPA, the state will not be required to control emissions of the relevant precursor from existing major stationary sources in the current attainment plan.

(3)(i) A NNSR precursor demonstration must evaluate the sensitivity of $PM_{2.5}$ levels in the nonattainment area

(B) Any control measure identified for adoption and implementation under this paragraph that can only be implemented in whole or in part during the period beginning 4 years after the effective date of designation of the Moderate $PM_{2.5}$ nonattainment area and the applicable attainment date for the area shall be considered an additional reasonable measure for the area.

(ii) If the state demonstrates that the area cannot practicably attain the applicable $PM_{2.5}$ NAAQS by the end of the sixth calendar year following the effective date of designation of the area, the state shall adopt all technologically and economically feasible control measures identified under paragraph (a)(3) of this section. This requirement also applies to areas that demonstrate pursuant to section 179B that the plan would be adequate to attain or maintain the standard but for emissions emanating from outside the United States.

(A) Any control measure identified for adoption and implementation under this paragraph that can be implemented in whole or in part by 4 years after the effective date of designation of the Moderate $PM_{2.5}$ nonattainment area shall be considered RACM for the area. Any such control measure that is also a control technology shall be considered RACT for the area.

(B) Any control measure identified for adoption and implementation under this paragraph that can only be implemented in whole or in part during the period beginning 4 years after the effective date of designation of the Moderate $PM_{2.5}$ nonattainment area through the end of the sixth calendar year following the effective date of designation of the area shall be considered an additional reasonable measure for the area.

(b) The state shall adopt control measures, including control technologies, on sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ plan precursors located within the state but outside the Moderate $PM_{2.5}$ nonattainment area if adopting such control measures is necessary to provide for attainment of the applicable $PM_{2.5}$ NAAQS in such area.

(c) For new or revised source emissions limitations on sources of direct $PM_{2.5}$ emissions, the state shall establish such emission limitations to apply either to the total of the filterable plus condensable fractions of direct $PM_{2.5}$, or to filterable $PM_{2.5}$ and condensable $PM_{2.5}$ separately.

§ 51.1010 Serious area attainment plan control strategy requirements.

(a) The state shall identify, adopt, and implement best available control measures, including control technologies, on sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ plan precursors located in any Serious $PM_{2.5}$ nonattainment area or portion thereof located within the state and consistent with the following:

(1) The state shall identify all sources of direct $PM_{2.5}$ emissions and all sources of emissions of $PM_{2.5}$ precursors in the nonattainment area in accordance with the emissions inventory requirements of § 51.1008(b).

(2) The state shall identify all potential control measures to reduce emissions from all sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ plan precursors in the nonattainment area identified under paragraph (a)(1) of this section.

(i) The state shall survey other NAAQS nonattainment areas in the U.S. and identify any measures for direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors not previously identified by the state during the development of the Moderate area attainment plan for the area.

(ii) The state is not required to identify and evaluate potential control measures to reduce emissions of a particular $PM_{2.5}$ precursor from any existing sources if the state has submitted a comprehensive precursor demonstration approved by the EPA, except where the EPA requires such information as necessary to evaluate the comprehensive precursor demonstration pursuant to § 51.1006(a)(1)(ii).

(iii) The state is not required to identify and evaluate potential control measures to reduce emissions of a particular $PM_{2.5}$ precursor from any existing major stationary sources if the state has submitted a major stationary source precursor demonstration approved by the EPA, except where the

EPA requires such information as necessary to evaluate the major stationary source demonstration pursuant to § 51.1006(a)(1)(ii).

(3) The state may make a demonstration that any measure identified under paragraph (a)(2) of this section is not technologically or economically feasible to implement in whole or in part by the end of the tenth calendar year following the effective date of designation of the area, and may eliminate such whole or partial measure from further consideration under this paragraph.

(i) For purposes of evaluating the technological feasibility of a potential control measure, the state may consider factors including but not limited to a source's processes and operating procedures, raw materials, physical plant layout, and potential environmental impacts such as increased water pollution, waste disposal, and energy requirements.

(ii) For purposes of evaluating the economic feasibility of a potential control measure, the state may consider capital costs, operating and maintenance costs, and cost effectiveness of the measure.

(iii) The state shall submit to the EPA as part of its Serious area attainment plan submission a detailed written justification for eliminating from further consideration any potential control measure identified under paragraph (a)(2) of this section on the basis of technological or economic infeasibility. The state shall provide as part of its written justification an explanation of how its criteria for determining the technological and economic feasibility of potential control measures under paragraphs (a)(3)(i) and (ii) of this section are more stringent than its criteria for determining the technological and economic feasibility of potential control measures under § 51.1009(a)(3)(i) and (ii) for the same sources in the $PM_{2.5}$ nonattainment area.

(4) Except as provided under paragraph (a)(3) of this section, the state shall adopt and implement all potential control measures identified under paragraph (a)(2) of this section.

(i) Any control measure that can be implemented in whole or in part by the end of the fourth year following the date of reclassification of the area to Serious shall be considered a best available control measure for the area. Any such control measure that is also a control technology for a stationary source in the area shall be considered a best available control technology for the area.

(ii) Any control measure that can be implemented in whole or in part between the end of the fourth year following the date of reclassification of the area to Serious and the applicable attainment date for the area shall be considered an additional feasible measure.

(5) The state shall use air quality modeling that meets the requirements of § 51.1011(b) and that accounts for emissions reductions estimated due to all best available control measures, including best available control technologies, and additional feasible measures identified for sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ plan precursors in the area to demonstrate that the area can attain the $PM_{2.5}$ NAAQS as expeditiously as practicable but no later than the end of the tenth calendar year following the effective date of designation of the area, or to demonstrate that the Serious $PM_{2.5}$ nonattainment area cannot practicably attain the applicable $PM_{2.5}$ NAAQS by such date.

(b) For a Serious $PM_{2.5}$ nonattainment area for which air quality modeling demonstrates the area cannot practicably attain the applicable $PM_{2.5}$ NAAQS by the end of the tenth calendar year following the date of designation of the area, the state shall identify, adopt, and implement the most stringent control measures that are included in the attainment plan for any state or are achieved in practice in any state, and can be feasibly implemented in the area, consistent with the following requirements.

(1) The state shall identify all sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors in the nonattainment area in accordance with the emissions inventory requirements of § 51.1008(b).

(2) The state shall identify all potential control measures to reduce emissions from all sources of direct $PM_{2.5}$

emissions and sources of emissions of $PM_{2.5}$ plan precursors in the nonattainment area identified under paragraph (b)(1) of this section.

(i) For the sources and source categories represented in the emission inventory for the nonattainment area, the state shall identify the most stringent measures for reducing direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors adopted into any SIP or used in practice to control emissions in any state.

(ii) The state shall reconsider and reassess any measures previously rejected by the state during the development of any previous Moderate area or Serious area attainment plan control strategy for the area.

(3) The state may make a demonstration that a measure identified under paragraph (b)(2) of this section is not technologically or economically feasible to implement in whole or in part by 5 years after the applicable attainment date for the area, and may eliminate such whole or partial measure from further consideration under this paragraph.

(i) For purposes of evaluating the technological feasibility of a potential control measure, the state may consider factors including but not limited to a source's processes and operating procedures, raw materials, physical plant layout, and potential environmental impacts such as increased water pollution, waste disposal, and energy requirements.

(ii) For purposes of evaluating the economic feasibility of a potential control measure, the state may consider capital costs, operating and maintenance costs, and cost effectiveness of the measure.

(iii) The state shall submit to the EPA as part of its Serious area attainment plan submission a detailed written justification for eliminating from further consideration any potential control measure identified under paragraph (b)(2) of this section on the basis of technological or economic infeasibility.

(4) Except as provided under paragraph (b)(3) of this section, the state shall adopt and implement all control measures identified under paragraph (b)(2) of this section that collectively shall achieve attainment as expeditiously as practicable but no later than 5 years after the applicable attainment date for the area.

(5) The state shall use air quality modeling that meets the requirements of § 51.1011(b) and that accounts for emissions reductions estimated due to all most stringent measures; best available control measures, including best available control technologies; and additional feasible measures identified for sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ plan precursors in the area to demonstrate that the area can attain the $PM_{2.5}$ NAAQS as expeditiously as practicable but no later than the end of the fifteenth calendar year following the effective date of designation of the area.

(c) For a Serious $PM_{2.5}$ nonattainment area that the EPA has determined has failed to attain by the applicable attainment date, the state shall submit a revised attainment plan with a control strategy that demonstrates that each year the area will achieve at least a 5 percent reduction in emissions of direct $PM_{2.5}$ or a 5 percent reduction in emissions of a $PM_{2.5}$ plan precursor based on the most recent emissions inventory for the area; and that the area will attain the standard as expeditiously as practicable consistent with § 51.1004(a)(3). The plan shall meet the requirements of § 51.1003(c)–(d), and the following requirements:

(1) The state shall identify all sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors in the nonattainment area in accordance with the emissions inventory requirements of § 51.1008(b).

(2) The state shall identify all potential control measures to reduce emissions from all sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ plan precursors in the nonattainment area identified under paragraph (c)(1) of this section.

(i) For the sources and source categories represented in the emission inventory for the nonattainment area, the state shall identify the most stringent measures for reducing direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors adopted into any SIP or used in practice to control emissions in any state, as applicable.

(ii) The state shall reconsider and reassess any measures previously rejected by the state during the development of any Moderate area or Serious area attainment plan control strategy for the area.

(3) The state may make a demonstration that a measure identified under paragraph (c)(2) of this section is not technologically or economically feasible to implement in whole or in part within 5 years or such longer period as the EPA may determine is appropriate after the EPA's determination that the area failed to attain by the Serious area attainment date, and may eliminate such whole or partial measure from further consideration under this paragraph.

(i) For purposes of evaluating the technological feasibility of a potential control measure, the state may consider factors including but not limited to a source's processes and operating procedures, raw materials, physical plant layout, and potential environmental impacts such as increased water pollution, waste disposal, and energy requirements.

(ii) For purposes of evaluating the economic feasibility of a potential control measure, the state may consider capital costs, operating and maintenance costs, and cost effectiveness of the measure.

(iii) The state shall submit to the EPA as part of its Serious area attainment plan submission a detailed written justification for eliminating from further consideration any potential control measure identified under paragraph (c)(2) of this section on the basis of technological or economic infeasibility.

(4) Except as provided under paragraph (c)(3) of this section, the state shall adopt and implement all control measures identified under paragraph (c)(2) of this section that collectively achieve attainment of the standard as expeditiously as practicable pursuant to § 51.1004(a)(3).

(5) The state shall conduct air quality modeling that meets the requirements of § 51.1011(b) and that accounts for emissions reductions due to control measures needed to meet the annual reduction requirement of 5 percent of direct $PM_{2.5}$ or a $PM_{2.5}$ plan precursor; most stringent measures; best available control measures, including best available control technologies; and additional feasible measures identified for sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ plan precursors in the area in order to demonstrate that the area can attain the $PM_{2.5}$ NAAQS as expeditiously as practicable.

(d) The state shall adopt control measures, including control technologies, on sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ plan precursors located within the state but outside the Serious $PM_{2.5}$ nonattainment area if adopting such control measures is necessary to provide for attainment of the applicable $PM_{2.5}$ NAAQS in such area by the attainment date.

(e) For new or revised source emissions limitations on sources of direct $PM_{2.5}$ emissions, the state shall establish such emission limitations to apply either to the total of the filterable plus condensable fractions of direct $PM_{2.5}$, or to filterable $PM_{2.5}$ and condensable $PM_{2.5}$ separately.

§ 51.1011 Attainment demonstration and modeling requirements.

(a) *Nonattainment areas initially classified as Moderate.* The attainment demonstration due to the EPA as part of any Moderate area attainment plan required under § 51.1003(a) shall meet all of the following criteria:

(1) The attainment demonstration shall show the projected attainment date for the Moderate nonattainment area that is as expeditious as practicable in accordance with the requirements of § 51.1004(a)(1).

(2) The attainment demonstration shall meet the requirements of Appendix W of this part and shall include inventory data, modeling results, and emission reduction analyses on which the state has based its projected attainment date.

(3) The base year for the emissions inventory required for an attainment demonstration under this paragraph shall be one of the 3 years used for designations or another technically appropriate inventory year if justified by the state in the plan submission.

(4) The control strategies modeled as part of the attainment demonstration shall be consistent with the following as applicable:

(i) For a Moderate area that can demonstrate attainment of the applicable $PM_{2.5}$ NAAQS no later than the end of the sixth calendar year following the date of designation of the area with the implementation of RACM and RACT and additional reasonable measures, the control strategies modeled as part of the attainment demonstration shall be consistent with control strategy requirements under §51.1009(a).

(ii) For a Moderate area that cannot practicably attain the applicable $PM_{2.5}$ NAAQS by the end of the sixth calendar year following the date of designation of the area with the implementation of RACM and RACT and additional reasonable measures, the control strategies modeled as part of the attainment demonstration shall be consistent with control strategy requirements under §51.1009(b).

(5) Required time frame for obtaining emissions reductions. For each Moderate nonattainment area, the attainment plan must provide for implementation of all control measures needed for attainment as expeditiously as practicable. All control measures in the attainment demonstration must be implemented no later than the beginning of the year containing the applicable attainment date, notwithstanding RACM implementation deadline requirements in §51.1009.

(b) *Nonattainment areas reclassified as Serious.* The attainment demonstration due to the EPA as part of a Serious area attainment plan required under §51.1003(b) or (c) shall meet all of the following criteria:

(1) The attainment demonstration shall show the projected attainment date for the Serious nonattainment area that is as expeditious as practicable.

(2) The attainment demonstration shall meet the requirements of Appendix W of this part and shall include inventory data, modeling results, and emission reduction analyses on which the state has based its projected attainment date.

(3) The base year for the emissions inventories required for attainment demonstrations under this paragraph shall be one of the 3 years used for designations or another technically appropriate inventory year if justified by the state in the plan submission.

(4) The control strategies modeled as part of a Serious area attainment demonstration shall be consistent with the control strategies required pursuant to §51.1003 and §51.1010.

(5) Required timeframe for obtaining emissions reductions. For each Serious nonattainment area, the attainment plan must provide for implementation of all control measures needed for attainment as expeditiously as practicable. All control measures must be implemented no later than the beginning of the year containing the applicable attainment date, notwithstanding BACM implementation deadline requirements in §51.1010.

§ 51.1012 Reasonable further progress (RFP) requirements.

(a) Each attainment plan for a $PM_{2.5}$ nonattainment area shall include an RFP plan that demonstrates that sources in the area will achieve such annual incremental reductions in emissions of direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors as are necessary to ensure attainment of the applicable $PM_{2.5}$ NAAQS as expeditiously as practicable. The RFP plan shall include all of the following:

(1) A schedule describing the implementation of control measures during each year of the applicable attainment plan. Control measures for Moderate area attainment plans are required in §51.1009, and control measures for Serious area attainment plans are required in §51.1010.

(2) RFP projected emissions for direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors for each applicable milestone year, based on the anticipated implementation schedule for control measures required in paragraph (a)(1) of this section. For purposes of establishing motor vehicle emissions budgets for transportation conformity purposes (as required in 40 CFR part 93) for a $PM_{2.5}$ nonattainment area, the state shall include in its RFP submission an inventory of on-road mobile source emissions in the nonattainment area for each milestone year.

(3) An analysis that presents the schedule of control measures and estimated emissions changes to be achieved by each milestone year, and that demonstrates that the control strategy will achieve reasonable progress toward attainment between the applicable base year and the attainment year. The analysis shall rely on information from the base year inventory for the nonattainment area required in §51.1008(a)(1) and the attainment projected inventory for the nonattainment area required in §51.1008(a)(2), in addition to the RFP projected emissions required in paragraph (a)(2) of this section.

(4) An analysis that demonstrates that by the end of the calendar year for each milestone date for the area determined in accordance with §51.1013(a), pollutant emissions will be at levels that reflect either generally linear progress or stepwise progress in reducing emissions on an annual basis between the base year and the attainment year. A demonstration of stepwise progress must be accompanied by appropriate justification for the selected implementation schedule.

(5) At the state's election, an analysis that identifies air quality targets associated with the RFP projected emissions identified for the milestone years at the design value monitor locations.

(b) For a multi-state or multi-jurisdictional nonattainment area, the RFP plans for each state represented in the nonattainment area shall demonstrate RFP on the basis of common multistate inventories. The states or jurisdictions within which the area is located must provide a coordinated RFP plan. Each state in a multi-state nonattainment area must ensure that the sources within its boundaries comply with enforceable emission levels and other requirements that in combination with the reductions planned in other state(s) within the nonattainment area will provide for attainment as expeditiously as practicable and demonstrate RFP consistent with these regulations.

§51.1013 Quantitative milestone requirements.

(a) Consistent with CAA section 189(c)(1), the state must submit in each attainment plan for a $PM_{2.5}$ nonattainment area specific quantitative milestones that demonstrate reasonable further progress toward attainment of the applicable $PM_{2.5}$ NAAQS in the area and that meet the following requirements:

(1) *Nonattainment areas initially classified as Moderate.* (i) Except as provided in paragraph (a)(4) of this section, each attainment plan submittal for a Moderate $PM_{2.5}$ nonattainment area shall contain quantitative milestones to be achieved no later than a milestone date of 4.5 years and 7.5 years from the date of designation of the area.

(ii) The plan shall contain quantitative milestones to be achieved by the milestone dates specified in paragraph (a)(1)(i) of this section, as applicable, and that provide for objective evaluation of reasonable further progress toward timely attainment of the applicable $PM_{2.5}$ NAAQS in the area. At a minimum, each quantitative milestone plan must include a milestone for tracking progress achieved in implementing the SIP control measures, including RACM and RACT, by each milestone date.

(2) *Nonattainment areas reclassified as Serious.* (i) Except as provided in paragraph (a)(4) of this section, each attainment plan submission that demonstrates that a Serious $PM_{2.5}$ nonattainment area can attain a particular $PM_{2.5}$ NAAQS by the end of the tenth calendar year following the effective date of designation of the area with the implementation of control measures as required under §51.1010(a) shall contain quantitative milestones to be achieved no later than milestone dates of 7.5 years and 10.5 years, respectively, from the date of designation of the area.

(ii) Except as provided in paragraph (a)(4) of this section, each attainment plan submission that demonstrates that a Serious $PM_{2.5}$ nonattainment area cannot practicably attain a particular $PM_{2.5}$ NAAQS by the end of the tenth calendar year following the date

date, the state shall submit, within 9 months after such determination, a plan revision that assures that the area will achieve the next milestone or attain the applicable NAAQS by the applicable date, whichever is earlier.

§51.1014 Contingency measure requirements.

(a) The state must include as part of each attainment plan submitted under this subpart for a $PM_{2.5}$ nonattainment area specific contingency measures that shall take effect with minimal further action by the state or the EPA following a determination by the Administrator that the area has failed:

(1) To meet any RFP requirement in an attainment plan approved in accordance with §51.1012;

(2) To meet any quantitative milestone in an attainment plan approved in accordance with §51.1013;

(3) To submit a quantitative milestone report required under §51.1013(b); or,

(4) To attain the applicable $PM_{2.5}$ NAAQS by the applicable attainment date.

(b) The contingency measures adopted as part of a $PM_{2.5}$ attainment plan shall meet all of the following requirements:

(1) The contingency measures shall consist of control measures that are not otherwise included in the control strategy or that achieve emissions reductions not otherwise relied upon in the control strategy for the area; and,

(2) Each contingency measure shall specify the timeframe within which its requirements become effective following a determination by the Administrator under paragraph (a) of this section.

(c) The attainment plan submission shall contain a description of the specific trigger mechanisms for the contingency measures and specify a schedule for implementation.

§51.1015 Clean data requirements.

(a) *Nonattainment areas initially classified as Moderate.* Upon a determination by the EPA that a Moderate $PM_{2.5}$ nonattainment area has attained the $PM_{2.5}$ NAAQS, the requirements for the state to submit an attainment demonstration, provisions demonstrating that reasonably available control measures (including reasonably available control technology for stationary sources) shall be implemented no later than 4 years following the date of designation of the area, reasonable further progress plan, quantitative milestones and quantitative milestone reports, and contingency measures for the area shall be suspended until such time as:

(1) The area is redesignated to attainment, after which such requirements are permanently discharged; or,

(2) The EPA determines that the area has re-violated the $PM_{2.5}$ NAAQS, at which time the state shall submit such attainment plan elements for the Moderate nonattainment area by a future date to be determined by the EPA and announced through publication in the FEDERAL REGISTER at the time EPA determines the area is violating the $PM_{2.5}$ NAAQS.

(b) *Nonattainment areas reclassified as Serious.* Upon a determination by the EPA that a Serious $PM_{2.5}$ nonattainment area has attained the $PM_{2.5}$ NAAQS, the requirements for the state to submit an attainment demonstration, reasonable further progress plan, quantitative milestones and quantitative milestone reports, and contingency measures for the area shall be suspended until such time as:

(1) The area is redesignated to attainment, after which such requirements are permanently discharged; or,

(2) The EPA determines that the area has re-violated the $PM_{2.5}$ NAAQS, at which time the state shall submit such attainment plan elements for the Serious nonattainment area by a future date to be determined by the EPA and announced through publication in the FEDERAL REGISTER at the time the EPA determines the area is violating the $PM_{2.5}$ NAAQS.

§51.1016 Continued applicability of the FIP and SIP requirements pertaining to interstate transport under CAA section 110(a)(2)(D)(i) and (ii) after revocation of the 1997 primary annual $PM_{2.5}$ NAAQS.

All control requirements associated with a FIP or approved SIP in effect for an area pursuant to obligations arising from CAA section 110(a)(2)(D)(i) and (ii) as of October 24, 2016, such as the CAIR or the CSAPR, shall continue

101st Congress
2d Session

HOUSE OF REPRESENTATIVES

Rept. 101–490
Part 1

CLEAN AIR ACT AMENDMENTS OF 1990

REPORT

OF THE

COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

ON

H.R. 3030

together with

ADDITIONAL, SUPPLEMENTAL, AND DISSENTING VIEWS

May 17, 1990.—Ordered to be printed

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Part 1

CLEAN AIR ACT AMENDMENTS OF 1990

MAY 17, 1990.—Ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

ADDITIONAL, SUPPLEMENTAL, AND DISSENTING VIEWS

[To accompany H.R. 3030]

[Including cost estimate of the Congressional Budget Office]

The Commerce on Energy and Commerce, to whom was referred the bill (H.R. 3030) to amend the Clean Air Act to provide for the attainment and maintenance of the national ambient air quality standards, the control of toxic air pollutants, the prevention of acid deposition, and other improvements in the quality of the Nation's air, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE, REFERENCE, AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Clean Air Act Amendments of 1990".

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Clean Air Act.

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

SEC. 101. GENERAL PLANNING REQUIREMENTS.

(a) AREA DESIGNATIONS.—Section 107(d) (42 U.S.C. 7407(d)) is amended to read as follows:

"(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 109, 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)(B) (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 the date of the enactment of the Clean Air Act Amendments of 1990) is designated, by operation of law, as a nonattainment area for such pollutant within the meaning of subparagraph (A)(i).

Federal government engages in, supports, in any way, provides financial assistance for, licenses, permits or approves any activity, that agency has an affirmative responsibility to assure that such action conforms to the State or Federal implementation plan.

Section 176(c) is amended to clarify that conformity requires a showing of conformity to the plan's purpose of eliminating or reducing the severity of NAAQS violations, and achieving expeditious attainment of all the ambient standards, as well as a showing that the relevant activities, considering any growth likely to result, will not contribute to a failure to attain the standard, or delay timely attainment of the standard or achievement of interim emissions reductions, including any applicable emission reduction milestones.

The Administrator is directed within one year to promulgate regulations governing the determination of conformity under this section. In the case of individual projects or activities that are part of larger plans, it may not always be necessary that each individual project fully meets the conformity criteria on its own merits. An individual project may be found in conformity if the project is part of a larger plan of projects, provided the plan as a whole meets the conformity criteria and an enforceable commitment has been made to implement the larger plan.

The Administrator's regulations must insure, however, that Federal agencies do not selectively approve, fund, or build only the elements of an overall plan that increase emissions, as has sometimes happened under current law. The regulations should also insure that the conformity of a project is reassessed if its design changes significantly from that described in a conforming overall plan. Each State with an ozone or CO nonattainment area is required under these regulations to submit within 18 months of enactment a SIP revision containing for each nonattainment area criteria and procedures for assessing conformity.

Through the evaluation of the air quality impacts of proposed projects before they are undertaken, the conformity provision is intended to foster long range planning for the attainment and maintenance of air quality standards, and to assure that Federal agencies do not take or support actions which are in any way inconsistent with the effort to achieve NAAQS or which fail to take advantage of opportunities to help in the effort to achieve NAAQS.

The Committee expects that the new conformity provisions will be especially helpful in assuring that air quality considerations play a greater role in Federally supported transportation planning efforts, which can have a major impact on air quality and, in some severely polluted areas, are essential as part of the program for achieving NAAQS.

The Committee believes these changes are consistent with the report of the GAO, dated March 1990, entitled "Air Pollution—EPA Needs More Data from FHWA on Changes to Highway Projects," although it is not limited to such projects.

Section 102. General provisions for nonattainment areas

This section of the bill amends part D of the Clean Air Act to include five subparts that provide (i) general requirements for all nonattainment areas, (ii) specific requirements for ozone nonattainment areas, (iii) specific requirements for CO nonattainment areas,

(iv) specific requirements for PM-10 nonattainment areas, and (v) specific requirements for sulfur oxides, NO_2, and Pb nonattainment areas.

Existing Clean Air Act section 171 is amended in section 102(a) of the bill to provide that the definition of "reasonable further progress" means such annual incremental reductions as prescribed by the Clean Air Act or by the Administrator. The definition of "nonattainment area" is revised to mean any area designated as nonattainment by the Administrator under section 107.

Classifications of nonattainment areas.—Section 172(a)(1) is amended in section 102(b) of the Clean Air Act Amendments of 1990 to provide that after promulgating the designation of an area as nonattainment, EPA is authorized to classify nonattainment areas for purposes of imposing different attainment dates and different control requirements. In determining the classifications, EPA may consider the severity of the air quality problem, the feasibility of pollution control measures, and other factors. To announce the classifications, EPA must publish a notice in the *Federal Register*, which is not subject to notice and comment and is not subject to judicial review. However, EPA's classification may be challenged after the Administrator takes action on a SIP submittal under section 110(k) or imposes sanctions under section 179. The notice should explain the basis for the classifications.

Attainment dates for nonattainment areas.—Revised section 172(a)(2) provides that for primary NAAQS, a nonattainment area must reach attainment as expeditiously as practicable, but no later than five years from the date of designation to nonattainment. EPA may grant an extension of up to 10 years, depending on the severity of the problem and the feasibility of control measures.

For secondary standards, the attainment date is a reasonable time after the date of designation.

The Administrator may grant up to two one-year extensions of the attainment date, upon request by the State, if the State complies with all plan requirements and no more than an minimal number of exceedances of the standard, as determined by EPA, has occurred in the year preceding the extension year.

Schedule for plan submissions.—Revised section 172(b) provides that when EPA promulgates the designation of an area as nonattainment, it must set a schedule for plan submittal. At the latest, all elements of the plan other than the attainment demonstration must be submitted within three years from the promulgation of the nonattainment designation.

Nonatainment plan provisions.—Revised section 172(c) establishes requirements for all nonattainment area plans, including those for ozone, CO, and PM-10 nonattainment areas. These requirements include for the following provisions:

(1) All reasonably available control measures are to be provided for as expeditiously as possible. To comply with this requirement, the SIP must require use of reasonably available control technology (RACT) on existing stationary sources, at a minimum.

(2) Requirements for reasonable further progress.

(3) Emissions inventories, including periodic updates as may be required by EPA.

(4) An identification of expected emissions from new sources and a demonstration that those emissions will be consistent with reasonable further progress towards attainment, and attainment by the date required.

(5) Requirements for new or modified major sources, in accordance with Clear Air Act section 173.

(6) Enforceable emission limits and other measures necessary for attainment (including, at the State's choice, economic incentives such as fees or auctions).

(7) General implementation planning requirements of section 110(a)(2).

(8) Equivalent modeling techniques, emission inventories, and planning procedures may be allowed by the Administrator upon application by the State.

(9) The implementation of specific contingency measures to be undertaken in the event the area fails to meet any applicable milestone, make reasonable further progress, or attain the NAAQS by the deadline date. Such measures are to take effect without further action by the State of Administrator, and are to be adequate to compensate for any emission reduction shortfall.

Plan revision required in response to findings of plan inadequacy.—Revised section 172(d) provides that where the State is required to submit a SIP revision because the Administrator has issued a finding that the SIP is substantially inadequate to provide for attainment or meet any other requirement of the Act, the SIP revision must correct any deficiencies indentified by the Administrator and meet all other applicable requirements of the Act. The Administrator is authorized to adjust otherwise applicable dates, except for attainment dates, to the extent necessary to apply those requirements in a consistent fashion. The new section requires EPA, as appropriate, to issue (i.e., make public) written guidelines, interpretations, and information to the States, taking into consideration any such guidelines, interpretations, or information provided to the States or others in the public before enactment. This requirement should help States submit adequate and approvable SIP's and revisions. It should also help those subject to the plan requirements. Internal agency memoranda to EPA personnel that are not available to the public or made public will not suffice.

Future modification of standard.—Revised section 172(e) provides that if a NAAQS is relaxed, control requirements in areas that remain in nonattainment may not be made less stringent.

Permit requirements.—Section 102(c) of the bill amends Clean Air Act sections 172 and 173, concerning permit requirements.

New source requirements.—The current Clean Air Act requirements for new and modified major stationary sources, including permits, are retained, revised, and expanded.

The requirement that new sources or modifications in nonattainment areas obtain offsets for their emissions is retained. The Administrator is given the authority to set the rules for determining the "baseline" against which emission offsets are to be credited. The baseline is to be consistent with assumptions used in the State's attainment demonstration. The section 172 requirement that States analyze possible alternative sites in issuing new source permits is retained.

Major sources must each obtain offsets, except for sources located in zones targeted by the Department of Housing and Urban Development and EPA for economic development, which must come within allowances for emission increases provided for in the area's attainment demonstration.

Prohibition on use of old growth allowances.—New section 173(b) prohibits continued use of growth allowances approved prior to any SIP call.

Offsets.—A new section 173(c) is added which clarifies that a new or modified major stationary source may only comply with offset requirements under Part D by obtaining enforceable emission reductions from the same source or other sources in the same nonattainment area. However, provision is made for a State to allow a source to obtain emission reductions in a second area (or other additional areas) if the second area has an equal or greater classification and emissions from that second area contribute to a violation of NAAQS in the first area. Such enforceable emission reductions are required to be in effect by the time the new or modified source commences operation.

Section 173(c) specifies that any such offsets must be adequate to assure that the total tonnage of increased emissions from the new or modified source are offset by an equal or greater reduction, as applicable, in actual emissions. Reductions in potential or allowable emissions are not to be deemed adequate if there is not a real reduction in actual emissions that equals or exceeds, as applicable, the emission increase accompanying the operation of the new or modified major source. Emission reductions otherwise required by law are not allowed to be creditable for the purposes of any offset requirement. Incidental emission reductions which are not otherwise required by this Act would not be considered "as required by law" and shall be creditable if they otherwise meet the requirements of the new section 172(c)(1). For example, reductions that are achieved indirectly pursuant to a requirement of the Act are not covered—for example, VOC reductions achieved by virtue of an air toxics requirement (other than the specific pollutant directly covered by such a requirement), or reductions achieved pursuant to a State requirement that goes beyond the requirements of this Act. These types of redutions are creditable.

In the case of ozone nonattainment areas covered under subpart 2 of these amendments, the Committee specifies that the minimal ratio of offsetting emission reductions to actual emission increases shall not be less than 1.1 to 1.0. In addition, greater offset ratios and more inclusive major source definitions in Sections 103, 104, and 105 of this bill may apply to the implementation of the offset program in ozone, CO, and PM-10 nonattainment areas to require greater offset ratios, and regulation of smaller sources, in more polluted areas.

The Committee notes that a company that is building either a new or modified production facility pursuant to a valid construction permit and that incurred no obligation under current law to obtain offsets as a condition of obtaining its construction permit would not be required under the provisions of this amendment to obtain offsets as a condition of being issued its operating permit. The amendment makes no change in current law in this regard.

Also, if the company builds its facility consistent with the requirements of the construction permit which was issued prior to enactment of this bill, the company may subsequently obtain an operating permit without meeting any additional obligations related to obtaining offsets, even if the area in which the company is building its facility moves from a classification which did not require offsets to one which does. In effect, the company is grandfathered, just as it would be under current law. The company would not be required to obtain offsets as a condition of obtaining its operating permits even if the operating permit is applied for by the company after enactment of the amendment.

Control technology information.—A new subsection 173(d) is added which requires States to submit to EPA control technology information from permits issued under Section 173. EPA is to make this information available to the States and the general public through a control technology clearinghouse (as provided in section 108(k)) for information regarding reasonably available control technology (RACT), best available control technology (BACT), and lowest achievable emission rate technology (LAER). The affected sources and States and local permitting authorities need access to such information.

Planning procedures.—Section 102(d) of the bill revises section 174 which addresses planning procedures. The planning procedures set out in current sections 174 (a) and (b) are broadened to ensure that State and local (including regional) authorities share in the development and implementation of the SIP, with some technical revisions to make clear that implementation includes enforcement and to conform this section with revisions in other parts of the Act. In addition, a new subsection (c) is added, which clarifies that when a nonattainment area includes more than one State, the affected States may jointly undertake planning procedures.

Maintenance plans.—Section 102(e) of the bill establishes a new Clean Air Act section 175A addressing Maintenance Plans. Under this section, any nonattainment area seeking redesignation to attainment must submit an approvable maintenance plan showing that the standard will be maintained for at least 10 years. The plan must include such additional measures as are necessary to assure such maintenance of the standard. Subsequent plan revisions are required eight years after designations as attainment to provide for maintenance of the standard for the 10-year period following the expiration of the first 10-year period.

The new section specifically provides that until such plan revision containing a maintenance plan meeting the requirements of this section is approved, and the area is redesignated as an attainment area, all existing SIP requirements and Part D requirements continue in force and effect.

The new section requires each maintenance plan SIP revision to include such contingency measures as the Administator deems necessary to promptly correct any violation of the standard which occurs after redesignation of the area as an attainment area. It also requires each such maintenance plan to provide contingency measures that include implementation by the State of all measures for control of the air pollutant concerned which were contained in the SIP for the area prior to its redesignation as an attainment area. More may be required by EPA. The Committee believes EPA should provide guidance which shall be public for such plans.

This requirement is intended to assure that areas which have attained and are on a maintenance plan have an adequate program of controls immediately available in the event the area once again exceeds the standard.

Interstate transport.—Section 102(f) of the bill establishes a new Clean Air Act section 176A which, upon EPA's own motion or upon petition from a State, provides for an interstate transport region that consists of all States which contribute to NAAQS violations in any one State for a particular pollutant. After establishing such a region, EPA may add or remove States from it, based on the same considerations concerning emissions.

Under section 176A(b), whenever EPA establishes an interstate transport region, it must establish a commission, consisting, as a minimum, of the Governor of each State or the Governor's designee, one air pollution official from each State in the region, the Administrator and a representative from each of the relevant EPA regions. It is intended that no member serve in two capacities. The Federal officials have a nonvoting status. All actions must be by majority vote. The Commission may recommend that EPA issue a SIP call to certain States, requiring them to include specified measures in their SIPs to solve the interstate transport problem. It can make other recommendations as well. All must include the basis for the submittals.

Under section 175(c), the Administrator is obligated to act, after an opportunity for public input, to approve or disapprove in whole or in part each of a Commission's recommendations within 18 months after they are submitted. Conforming changes are made to Clean Air Act section 106 (authorizing EPA to fund interstate air quality agencies) to authorize EPA funding for transport commissions formed under new Clean Air Act section 176A.

Sanctions and consequences of failure to attain.—Section 102(g) establishes a new section 179 specifying mandatory sanctions for State failure to submit or implement an approvable SIP, and establishing the consequences for nonattainment areas that fail to attain by the deadline date.

Section 179(a) outlines the State failures which are sanctionable once the EPA Administrator makes the finding or determination or takes a disapproval action. Other provisions of the Act guide the Administrator on when and whether to make such findings, etc. Of course, such findings, etc., are subject to judicial review as final agency actions.

These failures include failure to submit a plan or plan element meeting the minimum criteria of section 110(k), EPA disapproval of a State plan in whole or in part, failure to make any required submission satisfying the minimum criteria of section 110(k), and failure to implement any requirement of an approved plan.

If the State has not corrected such deficiency within 18 months from the Administrator's finding, determination, or disapproval, one of the two listed sanctions in section 179(b) (which includes a highway funding cut-off, and a 2:1 offset requirement) is to apply immediately upon expiration of such 18-month period. If the deficiency is not corrected within an additional six months, the second sanction from section 179(b) is similarly to apply immediately. Both sanctions are to apply at the expiration of the original 18-month period if the Administrator finds that the State is not making a good faith effort to rectify the deficiency. The sanctions remain in place until the Administrator finds that the deficiency has been corrected, and the State has come into compliance. In addition to any other applicable sanction, the Administrator may, in his discretion, withhold all or part of the State air quality grants provided under Section 105 of the Act.

The sanctions provided under Section 179(b) include (1) the cut-off of Federal highways monies, including any project or grant awarded under title 23 of the United States Code, other than for safety or mass transit; and (2) an incresed offset ratio of 2 to 1 for application of the emission offset requirements of section 173 to any new source or modification for which a permit is required under Part D.

This system of mandatory sanctions is intended to provide a clear incentive to States for the development and implementation of approvable State air quality plans. To give States operating in good faith an opportunity to correct their failures, 18 months is provided for States to correct deficiencies before sanctions apply. If a State has not corrected its failure in that time, however, one of the two sanctions in section 179(b), of the Administrator's choosing, applies immediately. To further encourage the State to repair its deficiency, the second sanction will apply in an additional six months, if the State has not yet remedied its failure under section 179(a).

The Committee intends the mandatory sanction to send a strong message that Congress is very serious about the effort to achieve clean air, and will require all States to comply fully with the provisions of the Clean Air Act.

The Committee intends that States not making good faith efforts are to be sanctioned more severely than would otherwise be provided for under section 179. The Committee also intends that the Administrator exercise his discretion in a fair and reasonable manner consistent with the requirements of this Act in making such findings. The objective is clean air, not punishment.

Failure to attain.—The sanctions in section 179 apply to failure to develop and implement a complete approvable plan or to otherwise comply with the requirements of the Clean Air Act. However, it is the Committee's intention that States which submit and properly implement a plan in compliance with the requirements of the Act, but which nevertheless fail to attain, are not to be sanctioned. Instead section 179(d) outlines additional pollution control measures and other consequences attaching to a failure to attain.

New Section 179(c) requires EPA to publish a notice in the *Federal Register* as expeditiously as practicable, but no later than six months after the attainment date, identifying areas failing to attain by their attainment deadline. The Administrator may subsequently revise or supplement determinations under this subsection based on more complete air quality information or analysis.

Section 179(d) describes the consequences of State failure to attain by the applicable deadline. States are given one year after the notice in subsection 179(c) to submit a revised SIP. The section

179(d) SIP revision is to include such additional measures as the Administrator prescribes, and is to include all measures for reducing emissions that can feasibly be implemented in the area in light of technological achievability, costs, and any nonair quality and other air quality related health and environmental impacts.

Federal implementation plans (FIPs).—Section 102(h) of the bill amends Clean Air Act Section 110(c) to provide that the Administrator has a mandatory duty to promulgate a Federal Implementation Plan (FIP) within two years after the Administrator, in accordance with section 179, either: (A) finds that the State has failed to make a required submission or that such submission does not satisfy the minimum criteria under section 110(k)(1)(A), or (B) disapproves a SIP submission in whole or in part.

This provision retains EPA responsibility in section 110(c) of current law to promulgate, in whole or in part, an air quality plan for the attainment, or maintenance of NAAQS, or for the prevention of significant deterioration of air quality, in the event that a State fails to develop and implement a complete approvable plan.

Historically, the FIP process has been effective. In some instances, it has prompted States to take actions required under the Act. For example, recent proposed FIPs in Phoenix, Chicago, and Southern California succeeded, after court action, in producing State air quality planning efforts in areas which had previously failed to comply with the provisions of the Act. The FIP process has also been useful in enforcing the prevention of significant deterioration (PSD) program under Part C of the Act. More than 30 States currently have PSD programs established and implemented through the FIP process.

Moreover, the legislation, as noted later, in defining the term "Federal Implementation Plan" should remove many of the uncertainties and concerns often expressed by EPA in applying this process.

Section 103. Additional provisions for ozone nonattainment areas

This section adds a new Subpart 2 to Part D of Title I of the Clean Air Act.

Classification and attainment dates.—Designated ozone nonattainment areas are classified by operation of law as marginal, moderate, serious, severe, or extreme areas based on the design values for the area under the existing ozone NAAQS. For each area, the primary NAAQS attainment date for ozone shall be as expeditiously as practicable, but no later than the specified attainment date for the applicable classification, subject to other provisions for extension.

These dates are outside limits intended to provide a reasonable target for a large class of nonattainment areas. In the case of each individual nonattainment area, the bill continues the responsibility to attain as expeditiously as practicable. The objective is to achieve the standard as early as possible with effective and enforceable measures and without gaming by the States, industry, and others.