BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PETITION OF MIDWAY RACS, LLC	)	**AS 12-003**
FOR AN ADJUSTED STANDARD FROM	)	**(Adjusted Standard-Air)**
35 ILL. ADM. CODE §218.586	)	

NOTICE OF FILING

TO: John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Bradley Halloran, Hearing Officer
Illinois Pollution Control Board
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Law Office of Shell J. Bleiweiss
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Suite 2100
Chicago, IL 60603

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an APPEARANCE and RECOMMENDATION of the Illinois Environmental Protection Agency, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Kent E. Mohr Jr.
Kent E. Mohr Jr.
Assistant Counsel
Division of Legal Counsel

DATED: August 15, 2012

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PETITION OF MIDWAY RACS, LLC	)	**AS 12-003**
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APPEARANCE

The undersigned hereby enters his Appearance on behalf of the Illinois Environmental Protection Agency.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Kent E. Mohr Jr.
Kent E. Mohr Jr.
Assistant Counsel
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RECOMMENDATION

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") by its attorney, Kent E. Mohr Jr., in response to the Amended Petition for an Adjusted Standard of Midway RACS, LLC ("Midway" or "Petitioner") from the Stage II vapor recovery ("Stage II") requirements codified at 35 Ill. Adm. Code § 218.586. Pursuant to 35 Ill. Adm. Code § 104.416, the Illinois EPA does not object to the Illinois Pollution Control Board ("Board") granting the Amended Petition of Midway with the adjusted standard language specified in this Recommendation. In support of its Recommendation, the Illinois EPA states as follows.

I. BACKGROUND

1. On April 11, 2012, Midway filed a Petition for Adjusted Standard ("Petition") pursuant to Section 28.1 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/28.1, and 35 Ill. Adm. Code Part 104, Subpart D. Specifically, the Petition requests that the Board grant an adjusted standard from Stage II, codified at 35 Ill. Adm. Code § 218.586, and require, in place of Stage II, that Midway comply with the standards of the federal onboard refueling vapor recovery ("ORVR") regulations at a new Chicago Midway International Airport Consolidated Rental Car Facility ("CRCF") that is not currently subject to the applicable provisions of 35 Ill. Adm. Code Part 218, Subpart Y, entitled "Gasoline Distribution."

2. On May 15, 2012, Midway filed with the Board a certificate of publication

required by 35 Ill. Adm. Code § 104.410 certifying that it provided notice of its Petition in accordance with 35 Ill. Adm. Code § 104.408. The notice appeared in the Chicago Sun-Times on April 18, 2012.

3. On May 17, 2012, the Board issued an Order finding Midway's Petition deficient and directed Midway to file an amended petition by June 15, 2012. Specifically, in its Order, the Board found that Midway failed to address the Section 28.1(c) factors, except 28.1(c)(4). In addition, the Board found that Midway must include supporting documents as opposed to references to websites, and that if Midway is not an individual, it must appear through an attorney licensed and registered to practice law.

4. On June 15, 2012, Midway filed a motion for extension of time to file an amended petition to July 9, 2012. The Illinois EPA did not object to Midway's motion.

5. On June 21, 2012, the Board Hearing Officer granted Midway's motion for extension of time and required Midway to file an amended petition by July 9, 2012.

6. On July 6, 2012, Midway filed an amended petition ("Amended Petition") addressing the deficiencies noted in the Board's May 17, 2012, Order.

7. On July 26, 2012, the Board issued an Order finding that Midway's notice met the requirements of Section 28.1 of the Act and that its Amended Petition met the content requirements of 35 Ill. Adm. Code § 104.406. Also, the Board accepted the matter for hearing.

8. Pursuant to 35 Ill. Adm. Code § 104.416, the Illinois EPA is required to make a recommendation to the Board on the disposition of a petition or amended petition for an adjusted standard within forty-five (45) days after filing of the petition or amended petition.

9. The Board promulgated 35 Ill. Adm. Code § 218.586 to implement the Stage II requirements of Section 182(b)(3)(A) of the Clean Air Act ("CAA") (42 U.S.C. §

7511a(b)(3)(A)) **(Exhibit 1)**.[1]

10. Section 218.586 requires gasoline dispensing operations located in the Chicago ozone nonattainment area that dispense an average monthly volume of more than 10,000 gallons of motor vehicle fuel per month to install, operate, and maintain Stage II systems that are certified by the California Air Resources Board as having a vapor recovery and removal efficiency of at least 95% by weight.

11. As Midway states in its Amended Petition, "[t]he Board adopted Stage II vapor recovery . . . R91-30, 16 Ill. Reg. 13864, effective August 24, 1992. (*The Board also adopted clean-up amendments to the regulation as* [*sic*] *R93-9, 17 Ill. Reg. 16636, effective September 27, 1993.)* The U.S. Environmental Protection Agency ("USEPA") approved Illinois' Stage II vapor recovery rules as part of the state implementation plan ("SIP") as [*sic*] 58 Fed. Reg. 3841 (January 12, 1993)." Amend. Pet. at 3.

12. Section 202(a)(6) of the CAA required USEPA to promulgate standards for the control of vehicle refueling emissions. 42 U.S.C. § 7521(a)(6) (See Amend. Pet. at Exhibit 2). Specifically, Section 202(a)(6) required passenger vehicles to be equipped with ORVR systems that provided a minimum evaporative emission capture efficiency of 95%. Id. (See Amend. Pet. at Exhibit 2). USEPA has indicated that ORVR has an in-use control efficiency of 98%. 77 Fed. Reg. 28772, 28777 (May 16, 2012) **(Exhibit 2)**.

13. In accordance with CAA Section 202(a)(6), ORVR systems were required to be phased-in based on a percentage of each manufacturer's fleet of vehicles beginning with the fourth model year after the model year in which the standards were promulgated. 42 U.S.C. § 7521(a)(6) (See Amend. Pet. at Exhibit 2). USEPA promulgated ORVR standards on April 6,

[1] Section 10(D) of the Act, 415 ILCS 5/10(D), also required the Board to adopt Stage II in accordance with CAA Section 182.

1994. 59 Fed. Reg. 16262 (April 6, 1994) **(Exhibit 3)**. All new passenger cars have been equipped with ORVR systems since 2000 and most other new gasoline-powered motor vehicles have been equipped with ORVR since 2006. 77 Fed. Reg. at 28774 **(Exhibit 2)**.

14. In CAA Section 202(a)(6), Congress allowed for the eventual elimination of Stage II once ORVR became widespread.[2] 42 U.S.C. § 7521(a)(6) (See Amend. Pet. at Exhibit 2).

15. On December 12, 2006, USEPA issued a memorandum providing guidance to states regarding the removal of Stage II where states demonstrate that widespread use of ORVR has occurred in certain specific motor vehicle fleets, including rental car fleets. See Amend. Pet. at Exhibit 4. This memorandum specifies that if a SIP revision submittal demonstrates that 95% of the vehicles in a rental fleet refueling at a rental car facility are equipped with ORVR and that this level of ORVR use will not decrease, then widespread use of ORVR can be established and Stage II can be removed or waived for that particular fleet refueling at that particular facility. See Amend. Pet. at Exhibit 4.

16. A vacuum-assist vapor recovery system is a commonly used control device for compliance with Stage II. This Stage II system uses a vacuum pump on the vapor return line to draw the gasoline vapors from the vehicle fill pipe back into an underground/aboveground storage tank.

17. ORVR systems installed in vehicles utilize an activated carbon canister. During refueling, gasoline vapors are forced into the carbon canister and are captured by the active carbon. Ultimately, the gasoline vapors are drawn into the engine and burned as fuel when the engine is started.

[2] Effective May 16, 2012, the USEPA determined that widespread use of ORVR had occurred throughout the national motor vehicle fleet and granted a general waiver of the CAA Section 182(b)(3) Stage II requirement. 77 Fed. Reg. at 28772 **(Exhibit 2)**. Subject to USEPA review and approval, states now have the option of removing Stage II programs from their ozone SIPs. Id.

18. While vacuum-assist Stage II and ORVR systems are effective in capturing gasoline vapors and have provided volatile organic compound emission reductions, these systems can be incompatible if operated simultaneously. For example, when an ORVR-equipped vehicle is refueled at a gasoline fueling operation that is equipped with an ORVR-incompatible vacuum-assist Stage II system, the ORVR carbon canister captures gasoline vapors. Then, instead of the Stage II system routing gasoline vapors into the underground storage tank, the vacuum pump draws fresh air into the underground storage tank. Fresh air ingestion in the underground storage tank destabilizes the liquid-vapor equilibrium, which causes increased evaporation of gasoline, and, in turn, increased pressure. Increased pressure in the underground storage tank causes excess gasoline vapors to be released out of the underground storage tank through its vent pipe and into the atmosphere. As Midway quotes in its Amended Petition, USEPA has indicated that "[t]his incompatibility can result in a 1 to 10 percent decrease in control efficiency over what would be achieved by either Stage II or ORVR alone." Amend. Pet. at 8. This incompatibility does not exist where an ORVR-compatible Stage II system is used.

II. DESCRIPTION OF THE FACILITY

19. The Illinois EPA has reviewed Midway's description (Amend. Pet. at 1-3, 6-7) of the new CRCF, including gasoline filling operations, but does not have sufficient evidence before it to confirm or refute this description, except with respect to Midway's vehicle fleets. Midway asserts, and provides evidence, that 100% of its fleets are composed of vehicles that are equipped with ORVR and the models of vehicles in its fleets are generally less than 3 years old. Amend. Pet. at 6-7. It would appear from the vehicle spreadsheets provided that these assertions are accurate.

20. The Illinois EPA makes the following additional comments regarding Midway's

description. Based on Midway's expectation of monthly motor vehicle fuel throughput and other facts, the new gasoline fueling operation located at the new CRCF would be subject to 35 Ill. Adm. Code § 218.586. However, this gasoline fueling operation is not currently subject to Section 218.586 because it is not in operation. The Illinois EPA notes that the Board is most often presented with petitions for relief from regulations that an affected source or operation is currently subject to. In its Amended Petition, Midway briefly mentions that the referenced rental car companies operate out of individual service facilities, that the Midway "RACs" operate separate Quick-Turn-Around ("QTA") facilities at Chicago Midway International Airport, that the existing service facilities are ¼ to 2 miles from the current rental car area, and that all of the "RACs" will relocate to the new CRCF upon its completion. Amend. Pet. at 1, 3, 6. Midway does not provide a description of pollution control equipment already in place or a qualitative and quantitative description of the emissions, discharges, or releases currently generated by its activities because there are none yet at the new CRCF. It appears, but isn't entirely clear, from a reading of the Amended Petition, that the existing, separate QTAs, which some may or may not include gasoline fueling operations, are operated by the individual rental car companies. Regardless, Midway does not indicate whether the existing gasoline fueling operations are subject to Stage II nor does it provide logs of monthly motor vehicle fuel throughput to evidence whether such operations are currently subject to 35 Ill. Adm. Code § 218.586. Perhaps it would aid the Board in its decision on the Amended Petition if Midway were to provide the Board with this information, including logs, to support the applicability of 35 Ill. Adm. Code § 218.586 to the existing, separate gasoline fueling operations.

21. In its Amended Petition, Midway asserts that "[g]iven that this request for relief is for a future Facility currently under construction, it is not possible to estimate the emissions,

discharges or releases that will be generated by the Midway RACs fleets at this location." Amend. Pet. at 7. While the lack of an estimate is not detrimental to the Amended Petition in the eyes of the Illinois EPA because of the higher general in-use efficiency rating of ORVR as compared to Stage II systems, it is certainly possible to make this estimate with the facts presented in the Amended Petition - namely Midway's estimation of the monthly motor vehicle fuel throughput for the new gasoline fueling operations, which likely bears some relation to the current collective monthly motor vehicle fuel throughput of the car rental companies, along with use of USEPA AP-42 emission factors.

22. In addition, Midway asserts that "...emissions from the facility will be less if this petition is granted than they would be if it is not." Amend. Pet. at 7. The Illinois EPA would agree with this statement only if an ORVR-incompatible Stage II system were to be installed and operated. It is not clear from the Amended Petition whether an ORVR-incompatible or ORVR-compatible vacuum-assist Stage II system will be installed.

III. COMPLIANCE ALTERNATIVES

23. The alternative to the proposed adjusted standard is to install and operate a Stage II system at the new CRCF. Midway asserts that the current fuel system design for the new CRCF calls for a vacuum-assist Stage II system. Amend. Pet. at 7. As briefly mentioned, the Illinois EPA notes that there are both ORVR-incompatible and ORVR-compatible (referred to as "enhanced") vacuum-assist Stage II systems, but it is unclear from the Amended Petition which type of vacuum-assist Stage II system Midway intends to install. In addition, there are ORVR-compatible "balance" Stage II systems that Midway could, but is not required to, install as an approvable Stage II system under 35 Ill. Adm. Code § 218.586.

24. The Illinois EPA accepts Midway's assertions in Section E of its Amended

Petition regarding the general in-use efficiencies of Stage II and ORVR, including the incompatibility that can result from simultaneous operation of an ORVR system and an ORVR-incompatible vacuum-assist Stage II system. The Illinois EPA acknowledges that compliance with ORVR alone will result in a higher level of gasoline vapor recovery than what would be achieved with a combination of ORVR and an ORVR-incompatible vacuum-assist Stage II system.

25. In Section F of its Amended Petition, Midway provides an estimate of the costs to install and maintain a Stage II system (presumably a vacuum-assist Stage II system) at the new CRCF, but does not provide any evidence to support such costs. Further, it is not clear from the Amended Petition whether the costs Midway provides relate to an ORVR-incompatible or ORVR-compatible Stage II system. While the cost estimate provided by Midway does not appear to be unreasonable, the Illinois EPA has no evidence to confirm or refute this estimate. The Illinois EPA acknowledges that it is a sound business decision for a car rental facility to not install a Stage II system where 95-100% widespread use of ORVR can be demonstrated and controlled.

26. Therefore, the Illinois EPA believes that Midway makes a reasonable request for an adjusted standard.

IV. PROPOSED ADJUSTED STANDARD

27. Midway has requested an adjusted standard from 35 Ill. Adm. Code § 218.586 insofar as that regulation may apply to Midway's new gasoline filling operations at the new CRCF. Midway has requested the adjusted standard to state as follows:

> The Chicago Midway Airport Consolidated Facility is not subject to the requirements of Section 218.586, effective immediately, so long as the vehicles fueled at the Chicago Midway Airport Consolidated Facility are equipped with onboard refueling vapor

> recovery systems (ORVR) certified by the U.S. Environmental Protection Agency to capture a minimum of 95% of the gasoline vapor displaced during fueling.

Amend. Pet. at 8-9.

28. Midway asserts that "[t]he RACs already fuel only vehicles equipped with ORVR systems at their individual facilities nationwide. Therefore, the level of effort for the LLC to comply with the adjusted standard is minimal, merely to continue fueling only ORVR-equipped vehicles and to delete the initially designed Stage II system from the final construction documents for the Project." Amend. Pet. at 9. The Illinois EPA agrees that this level of effort is minimal.

29. In the event the Board grants Midway's Amended Petition, the Illinois EPA requests that the Board adopt the following language as part of the adjusted standard.

> 1. The Chicago Midway International Airport Consolidated Rental Car Facility (5040 W. 55th Street, Chicago, Illinois), operated by Midway RACS, LLC, shall not be subject to the requirements of 35 Ill. Adm. Code § 218.586 so long as all of the vehicles fueled at the Chicago Midway International Airport Consolidated Rental Car Facility are equipped with onboard refueling vapor recovery systems certified by the USEPA to capture a minimum of 95% of the gasoline vapor displaced during fueling.
>
> 2. Midway RACS, LLC shall operate in full compliance with all other applicable provisions of 35 Ill. Adm. Code Part 218, including, but not limited to, Subpart Y.
>
> 3. Midway RACS, LLC shall operate in full compliance with the Clean Air Act, Illinois Environmental Protection Act, and all applicable statutes, codes, and regulations not otherwise discussed herein.

30. The Illinois EPA has recommended different language than requested by Midway to ensure that the adjusted standard language is clear. Also, the Illinois EPA has proposed additional language for the adjusted standard to address any other requirements applicable to

Midway's operations. For instance, Midway's gasoline fueling operations at the new CRCF will likely be subject to 35 Ill. Adm. Code § 218.583. Further, Midway may be subject to other statutory and regulatory provisions, including, but not limited to, permit requirements. Therefore, Midway should ensure compliance with all applicable statutes, codes, and regulations.

V. ENVIRONMENTAL IMPACT

31. As discussed *supra*, ORVR systems can capture 98% of evaporative emissions from gasoline fueling. Also as discussed, simultaneous operation of ORVR and ORVR-incompatible vacuum-assist Stage II systems can result in a 1 to 10% decrease in control efficiency. Further, there are ORVR-compatible Stage II systems – enhanced vacuum-assist and balance Stage II systems. Such ORVR-compatible Stage II systems can capture a percentage of the remaining emissions that ORVR does not capture. For example, if an ORVR-compatible Stage II system has a theoretical capture efficiency of 95%, this system could capture 95% of the remaining 2% of emissions that an ORVR system cannot.

32. While Petitioner provides the general in-use efficiencies of both ORVR and Stage II alone, along with the incompatibility that can result from the use of competing systems, Petitioner does not provide a case-specific qualitative or quantitative analysis of its impact on the environment if it were to comply with 35 Ill. Adm. Code § 218.586 as compared to only the proposed adjusted standard. Also, Petitioner does not provide a case-specific analysis of the qualitative and quantitative nature of emissions, discharges, or releases. However, the lack of case-specific analyses is not detrimental to the Amended Petition in the eyes of the Illinois EPA because of the general ORVR and Stage II in-use efficiency ratings and incompatibility issue.

33. There should be no detriment to the environment if the Amended Petition is granted. In fact, if the Amended Petition is granted, an environmental benefit is likely in that

there will be no decrease in ORVR control efficiency due to an ORVR-incompatible vacuum-assist Stage II system, if such a system is installed. In the event an ORVR-compatible Stage II system is installed, a miniscule environmental benefit may result due to the Stage II system capturing a small percentage of emissions that ORVR does not capture. However, that miniscule environmental benefit would likely be outweighed by the cost of installation and maintenance of the Stage II system.

VI. STANDARD OF REVIEW

34. Section 218.586 does not specify a level of justification or other information or requirements necessary for an adjusted standard. Where the regulation of general applicability does not specify a level of justification, Section 28.1(c) of the Act, 415 ILCS 5/28.1(c), states that the Board may grant an adjusted standard when it determines that:

> (1) factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;
>
> (2) the existence of those factors justifies an adjusted standard;
>
> (3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and
>
> (4) the adjusted standard is consistent with any applicable federal law.

35 Ill. Adm. Code § 104.426 reiterates this burden of proof that Petitioner must satisfy.

35. As recognized in the Board's Order dated May 17, 2012, Midway did not address the Section 28.1(c) factors, except 28.1(c)(4), in its Petition. In its Amended Petition, Midway addresses all of the Section 28.1(c) factors. The Illinois EPA believes that the requisite justification exists and that Midway can establish its burden. Midway has reached the point

anticipated by the USEPA in Section 202(a)(6) of the CAA. From the evidence Midway provided, all of the vehicles in Midway's fleets are ORVR-equipped. Section 218.586 was promulgated when very few vehicles on the road were ORVR-equipped. All of the Midway member rental car companies presumably can "control" the vehicles at the new CRCF and guarantee that all are ORVR-equipped. Since ORVR serves the same function as Stage II and is more effective at vapor recovery, no environmental or health effects should occur that are substantially and significantly more adverse than those considered by the Board in adopting 35 Ill. Adm. Code § 218.586. Again, the Illinois EPA notes that the incompatibility issue arises only with an ORVR-incompatible Stage II system. This incompatibility can result in a decrease in control efficiency, or an increase in emissions.

VII. CONSISTENCY WITH FEDERAL LAW

36. Pursuant to Section 28.1(c)(4) of the Act, 415 ILCS 5/28.1(c)(4), and 35 Ill. Adm. Code 104.426(a)(4), adjusted standards must be consistent with federal law. The adjusted standard is consistent with federal law.

37. As discussed *supra*, in Section 202(a)(6) of the CAA, Congress allowed for the eventual elimination of Stage II once ORVR became widespread.[3] Also as discussed *supra*, in 2006, USEPA issued a memorandum providing guidance to States for demonstrating widespread use of ORVR in rental car fleets. This guidance specifies that such widespread use determinations could be established if 95% of the vehicles in a rental fleet refueling at a rental car facility are equipped with ORVR and this level of ORVR use would not decrease. Petitioner asserts that 100% of its fleets are composed of vehicles that are equipped with ORVR and the

[3] Effective May 16, 2012, the USEPA determined that widespread use of ORVR had occurred throughout the national motor vehicle fleet and granted a general waiver of the CAA Section 182(b)(3) Stage II requirement. 77 Fed. Reg. at 28772 **(Exhibit 2)**. Subject to USEPA review and approval, states now have the option of removing Stage II programs from their ozone SIPs. Id.

models of vehicles in its fleets are generally less than 3 years old. Amend. Pet. at 6-7. From a review of the fleet information provided, it appears that 100% of the vehicles in Midway's fleets are ORVR-equipped.

38. Section 110 of the CAA, 42 U.S.C. § 7410, **(Exhibit 4)** grants states the authority to promulgate or revise a SIP subject to approval by USEPA. If the adjusted standard is adopted by the Board, the Illinois EPA will submit the adjusted standard to USEPA as a SIP revision.

VIII. HEARING

39. In its Amended Petition, Midway does not address 35 Ill. Adm. Code § 104.406(j) regarding requesting or waiving a hearing. The Illinois EPA notes, however, that Midway requested a hearing in its Petition. Pet. at 11.

40. The Board may be required to hold a hearing or may elect to hold a hearing on a petition for adjusted standard as specified in Section 28.1 of the Act, 415 ILCS 5/28.1, and 35 Ill. Adm. Code § 104.422.

41. Any adjusted standard that the Board may grant to Midway will be submitted to USEPA as a SIP revision. Proper notice, the opportunity to submit written comments, and, at the very least, the opportunity to request a hearing must be provided in order to submit any adjusted standard to USEPA as a SIP revision. 40 C.F.R. § 51.102 **(Exhibit 5)**. USEPA has recently issued guidelines relating to public notice of SIP submittals which are attached hereto as **Exhibit 6**. These guidelines provide a reiteration of the requirements contained in 40 CFR § 51.102 as well as requisite language that must be included in the public notice and an example of a public notice document.

42. In the event the Board elects not to hold a hearing and a hearing is not requested, one need not be held. However, compliance with the aforementioned federal regulation and

USEPA guidelines pertaining to proper notice, opportunity to comment, and also cancellation of the hearing is still required.

IX. RECOMMENDATION AND CONCLUSION

43. Based on the information and assertions contained in Midway's Amended Petition, and an analysis by the Illinois EPA technical staff, it is the Illinois EPA's position that widespread use of ORVR has occurred in Midway's fleets. Furthermore, it is the Illinois EPA's position that compliance with ORVR alone will provide a higher percentage of vapor recovery than simultaneous operation of ORVR and ORVR-incompatible vacuum-assist Stage II systems. The financial outlay for an ORVR-incompatible Stage II system doesn't make sense where 100% of the vehicles fueled are ORVR-equipped. The costs of installing an ORVR-compatible Stage II system would likely outweigh the miniscule environmental benefit provided by that compatible system. As a result, it is the Illinois EPA's position that compliance by Midway with 35 Ill. Adm. Code § 218.586 at the new CRCF is not reasonable from both an environmental and economic perspective.

44. Therefore, the Illinois EPA does not object to the Board granting an adjusted standard with the adjusted standard language specified in this Recommendation.

WHEREFORE, for the reasons set forth above, the Illinois EPA does not object to the Board granting Midway's Amended Petition for an Adjusted Standard from Stage II with the adjusted standard language specified in this Recommendation.

Respectfully submitted,

ILLINIOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Kent E. Mohr Jr.
Kent E. Mohr Jr.
Assistant Counsel
Division of Legal Counsel

Dated: August 15, 2012

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STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served electronically the attached RECOMMENDATION and APPEARANCE of the Illinois Environmental Protection Agency upon the following persons:

John Therriault, Assistant Clerk
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on this 15th day of August, 2012.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Kent E. Mohr Jr.
Kent E. Mohr Jr.
Assistant Counsel
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EXHIBIT 1

in that State in accordance with table 1 of subsection (a) of this section to a higher classification. The Administrator shall publish a notice in the Federal Register of any such request and of action by the Administrator granting the request.

(4) Failure of Severe Areas to attain standard

(A) If any Severe Area fails to achieve the national primary ambient air quality standard for ozone by the applicable attainment date (including any extension thereof), the fee provisions under section 7511d of this title shall apply within the area, the percent reduction requirements of section 7511a(c)(2)(B) and (C) of this title (relating to reasonable further progress demonstration and NO_x control) shall continue to apply to the area, and the State shall demonstrate that such percent reduction has been achieved in each 3-year interval after such failure until the standard is attained. Any failure to make such a demonstration shall be subject to the sanctions provided under this part.

(B) In addition to the requirements of subparagraph (A), if the ozone design value for a Severe Area referred to in subparagraph (A) is above 0.140 ppm for the year of the applicable attainment date, or if the area has failed to achieve its most recent milestone under section 7511a(g) of this title, the new source review requirements applicable under this subpart in Extreme Areas shall apply in the area and the term[1] "major source" and "major stationary source" shall have the same meaning as in Extreme Areas.

(C) In addition to the requirements of subparagraph (A) for those areas referred to in subparagraph (A) and not covered by subparagraph (B), the provisions referred to in subparagraph (B) shall apply after 3 years from the applicable attainment date unless the area has attained the standard by the end of such 3-year period.

(D) If, after November 15, 1990, the Administrator modifies the method of determining compliance with the national primary ambient air quality standard, a design value or other indicator comparable to 0.140 in terms of its relationship to the standard shall be used in lieu of 0.140 for purposes of applying the provisions of subparagraphs (B) and (C).

(c) References to terms

(1) Any reference in this subpart to a "Marginal Area", a "Moderate Area", a "Serious Area", a "Severe Area", or an "Extreme Area" shall be considered a reference to a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area as respectively classified under this section.

(2) Any reference in this subpart to "next higher classification" or comparable terms shall be considered a reference to the classification related to the next higher set of design values in table 1.

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

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

EXEMPTIONS FOR STRIPPER WELLS

Section 819 of Pub. L. 101-549 provided that: "Notwithstanding any other provision of law, the amendments to the Clean Air Act made by section 103 of the Clean Air Act Amendments of 1990 [enacting this section and sections 7511a to 7511f of this title] (relating to additional provisions for ozone nonattainment areas), by section 104 of such amendments [enacting sections 7512 and 7512a of this title] (relating to additional provisions for carbon monoxide nonattainment areas), by section 105 of such amendments [enacting sections 7513 to 7513b of this title and amending section 7476 of this title] (relating to additional provisions for PM-10 nonattainment areas), and by section 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) of this section.

(B) Emissions statements

(i) Within 2 years after November 15, 1990, the State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first such statement shall be submitted within 3 years after November 15, 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

(ii) The State may waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under subparagraphs[1] (1) or (3)(A), provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

(4) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increased emissions of such air pollutant shall be at least 1.1 to 1.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area. Section 7502(c)(9) of this

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

title (relating to contingency measures) shall not apply to Marginal Areas.

(b) Moderate Areas

Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area, make the submissions described under subsection (a) of this section (relating to Marginal Areas), and shall also submit the revisions to the applicable implementation plan described under this subsection.

(1) Plan provisions for reasonable further progress

(A) General rule

(i) By no later than 3 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions, within 6 years after November 15, 1990, of at least 15 percent from baseline emissions, accounting for any growth in emissions after 1990. Such plan shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone by the attainment date applicable under this chapter. This subparagraph shall not apply in the case of oxides of nitrogen for those areas for which the Administrator determines (when the Administrator approves the plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment.

(ii) A percentage less than 15 percent may be used for purposes of clause (i) in the case of any State which demonstrates to the satisfaction of the Administrator that—

(I) new source review provisions are applicable in the nonattainment areas in the same manner and to the same extent as required under subsection (e) of this section in the case of Extreme Areas (with the exception that, in applying such provisions, the terms "major source" and "major stationary source" shall include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 5 tons per year of volatile organic compounds);

(II) reasonably available control technology is required for all existing major sources (as defined in subclause (I)); and

(III) the plan reflecting a lesser percentage than 15 percent includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To qualify for a lesser percentage under this clause, a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher category.

(B) Baseline emissions

For purposes of subparagraph (A), the term "baseline emissions" means the total amount of actual VOC or NO_x emissions from all anthropogenic sources in the area during the calendar year 1990, excluding emissions that would be eliminated under the regulations described in clauses (i) and (ii) of subparagraph (D).

(C) General rule for creditability of reductions

Except as provided under subparagraph (D), emissions reductions are creditable toward the 15 percent required under subparagraph (A) to the extent they have actually occurred, as of 6 years after November 15, 1990, from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under subchapter V of this chapter.

(D) Limits on creditability of reductions

Emission reductions from the following measures are not creditable toward the 15 percent reductions required under subparagraph (A):

(i) Any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990.

(ii) Regulations concerning Reid Vapor Pressure promulgated by the Administrator by November 15, 1990, or required to be promulgated under section 7545(h) of this title.

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

(iv) Measures required under subsection (a)(2)(B) of this section to be submitted immediately after November 15, 1990 (concerning corrections to motor vehicle inspection and maintenance programs).

(2) Reasonably available control technology

The State shall submit a revision to the applicable implementation plan to include provisions to require the implementation of reasonably available control technology under section 7502(c)(1) of this title with respect to each of the following:

(A) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between November 15, 1990, and the date of attainment.

(B) All VOC sources in the area covered by any CTG issued before November 15, 1990.

(C) All other major stationary sources of VOCs that are located in the area.

Each revision described in subparagraph (A) shall be submitted within the period set forth by the Administrator in issuing the relevant CTG document. The revisions with respect to sources described in subparagraphs (B) and (C) shall be submitted by 2 years after November 15, 1990, and shall provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.

(3) Gasoline vapor recovery

(A) General rule

Not later than 2 years after November 15, 1990, the State shall submit a revision to the

applicable implementation plan to require all owners or operators of gasoline dispensing systems to install and operate, by the date prescribed under subparagraph (B), a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. The Administrator shall issue guidance as appropriate as to the effectiveness of such system. This subparagraph shall apply only to facilities which sell more than 10,000 gallons of gasoline per month (50,000 gallons per month in the case of an independent small business marketer of gasoline as defined in section 7625–1 [2] of this title).

(B) Effective date

The date required under subparagraph (A) shall be—

(i) 6 months after the adoption date, in the case of gasoline dispensing facilities for which construction commenced after November 15, 1990;

(ii) one year after the adoption date, in the case of gasoline dispensing facilities which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before the adoption date; or

(iii) 2 years after the adoption date, in the case of all other gasoline dispensing facilities.

Any gasoline dispensing facility described under both clause (i) and clause (ii) shall meet the requirements of clause (i).

(C) Reference to terms

For purposes of this paragraph, any reference to the term "adoption date" shall be considered a reference to the date of adoption by the State of requirements for the installation and operation of a system for gasoline vapor recovery of emissions from the fueling of motor vehicles.

(4) Motor vehicle inspection and maintenance

For all Moderate Areas, the State shall submit, immediately after November 15, 1990, a revision to the applicable implementation plan that includes provisions necessary to provide for a vehicle inspection and maintenance program as described in subsection (a)(2)(B) of this section (without regard to whether or not the area was required by section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) to have included a specific schedule for implementation of such a program).

(5) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase[3] emissions of such air pollutant shall be at least 1.15 to 1.

(c) Serious Areas

Except as otherwise specified in paragraph (4), each State in which all or part of a Serious Area is located shall, with respect to the Serious Area (or portion thereof, to the extent specified in this subsection), make the submissions described under subsection (b) of this section (relating to Moderate Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Serious Area, the terms "major source" and "major stationary source" include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds.

(1) Enhanced monitoring

In order to obtain more comprehensive and representative data on ozone air pollution, not later than 18 months after November 15, 1990, the Administrator shall promulgate rules, after notice and public comment, for enhanced monitoring of ozone, oxides of nitrogen, and volatile organic compounds. The rules shall, among other things, cover the location and maintenance of monitors. Immediately following the promulgation of rules by the Administrator relating to enhanced monitoring, the State shall commence such actions as may be necessary to adopt and implement a program based on such rules, to improve monitoring for ambient concentrations of ozone, oxides of nitrogen and volatile organic compounds and to improve monitoring of emissions of oxides of nitrogen and volatile organic compounds. Each State implementation plan for the area shall contain measures to improve the ambient monitoring of such air pollutants.

(2) Attainment and reasonable further progress demonstrations

Within 4 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan that includes each of the following:

(A) Attainment demonstration

A demonstration that the plan, as revised, will provide for attainment of the ozone national ambient air quality standard by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(B) Reasonable further progress demonstration

A demonstration that the plan, as revised, will result in VOC emissions reductions from the baseline emissions described in subsection (b)(1)(B) of this section equal to the following amount averaged over each consecutive 3-year period beginning 6 years after November 15, 1990, until the attainment date:

(i) at least 3 percent of baseline emissions each year; or

(ii) an amount less than 3 percent of such baseline emissions each year, if the State demonstrates to the satisfaction of the Administrator that the plan reflecting such

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

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

EXHIBIT 2

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2010–1076; FRL–9671–3]

RIN 2060–AQ97

Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA has determined that onboard refueling vapor recovery (ORVR) technology is in widespread use throughout the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions, and, therefore, by this action, the EPA is waiving the requirement for states to implement Stage II gasoline vapor recovery systems at gasoline dispensing facilities in nonattainment areas classified as Serious and above for the ozone national ambient air quality standards (NAAQS). This finding will be effective as noted below in the **DATES** section. After the effective date of this notice, a state previously required to implement a Stage II program may take appropriate action to remove the program from its State Implementation Plan (SIP). Phasing out the use of Stage II systems may lead to long-term cost savings for gas station owners and operators while air quality protections are maintained.

DATES: This rule is effective on May 16, 2012.

ADDRESSES: The EPA has established a docket for this rule, identified by Docket ID No. EPA–HQ–OAR–2010–1076. All documents in the docket are listed in *www.regulations.gov*. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Dail, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail code C539–01, Research Triangle Park, NC 27711, telephone (919) 541–2363; fax number: 919–541–0824; email address: *dail.lynn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Purpose of Regulatory Action

Since 1990, Stage II gasoline vapor recovery systems have been a required emissions control measure in Serious, Severe, and Extreme ozone nonattainment areas. Beginning with model year 1998, ORVR equipment has been phased in for new vehicles, and has been a required control on nearly all new highway vehicles since 2006. Over time, non-ORVR vehicles will continue to be replaced with ORVR vehicles. Stage II and ORVR emission control systems are redundant, and the EPA has determined that emission reductions from ORVR are essentially equal to and will soon surpass the emission reductions achieved by Stage II alone. In this action, the EPA is eliminating the largely redundant Stage II requirement in order to ensure that refueling vapor control regulations are beneficial without being unnecessarily burdensome to American business. This action allows, but does not require, states to discontinue Stage II vapor recovery programs.

II. Summary of the Major Provisions of This Final Rule

Clean Air Act (CAA) section 202(a)(6) provides discretionary authority to the EPA Administrator to, by rule, revise or waive the section 182(b)(3) Stage II requirement for Serious, Severe and Extreme ozone nonattainment areas after the Administrator determines that ORVR is in widespread use throughout the motor vehicle fleet. Based on criteria that the EPA proposed last year (76 FR 41731, July 15, 2011), the EPA is determining that ORVR is in widespread use. As of the effective date of today's action, states that are implementing mandatory Stage II programs under section 182(b)(3) of the CAA may submit revisions to their SIPs to remove this program.

The EPA will also be issuing non-binding guidance on developing and submitting approvable SIP revisions.[1] This guidance will address SIP reqnirements for states in the Ozone Transport Region (OTR), which are separately required under section 184(b)(2) of the CAA to adopt and implement control measures capable of achieving emissions reductions comparable to those achievable by Stage II. The EPA is updating its guidance for estimating what Stage II comparable emissions reductions could be, in light of the ORVR widespread use determination. The EPA now expects Stage II comparable emissions reductions to be substantially less than what was estimated in the past before ORVR use became widespread. Therefore, the EPA encourages states to consult the updated guidance before submitting a SIP revision removing Stage II controls.

III. Costs and Benefits

The primary purpose of this final rule is to promulgate a determination that ORVR is in widespread use as permitted in section 202(a)(6) of the CAA. In this final rule, EPA is exercising the authority provided by section 202(a)(6) of the CAA to, by rule, revise or waive the section 182(b)(3) Stage II requirement for Serious, Severe, and Extreme ozone nonattainment areas after the Administrator determines that ORVR is in widespread use throughout the motor vehicle fleet. This in turn gives states that were required to implement Stage II vapor recovery under section 182(b)(3) of the CAA the option to submit for the EPA's review and approval revised ozone SIPs that will remove this requirement. The EPA projects that during 2013–2015, gasoline-dispensing facilities (GDFs) in up to 19 states and the District of Columbia could seek to decommission and remove Stage II systems from their dispensers. There are about 30,600 GDFs with Stage II in these 20 areas. If the states submit and EPA approves SIP revisions to remove Stage II systems from these GDFs, the EPA projects savings of about $10.2 million in the first year, $40.5 million in the second year, and $70.9 million in the third year. Long-term savings are projected to be about $91 million per year, compared to the current use of Stage II systems in these areas. No significant emission

[1] "Phasing Out Stage II Gasoline Refueling Vapor Recovery Programs: Guidance on Satisfying Requirements of Clean Air Act Sections 110(*l*), 193, and 184(b)(2) (tentative title)." U.S. EPA Office of Air and Radiation, forthcoming. This guidance will provide the EPA's recommendations for states to consider when developing SIP revisions following today's rulemaking. Unlike the final rule, the guidance is not final agency action, and is not binding on or enforceable against any person. Consequently, it is subject to possible revision without additional rulemaking. In addition, the approaches suggested in the guidance (or in any changes thereto) will not represent final agency action unless and until the EPA takes a final SIP approval or disapproval action implementing those approaches.

increases or decreases are expected from this action.

IV. General Information

A. Does this action apply to me?

Entities directly affected by this action include states (typically state air pollution control agencies) and, in some cases, local governments that develop air pollution control rules that apply to areas classified as Serious and above for nonattainment of the ozone NAAQS. Individuals and companies that operate gasoline dispensing facilities may be indirectly affected by virtue of state action in SIPs that implement provisions resulting from final rulemaking on this action; many of these sources are in the following groups:

Industry group	SIC [a]	NAICS [b]
Gasoline stations	5541	447110, 447190

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice will be posted at *http://www.epa.gov/air/ozonepollution/actions.html#impl* under "recent actions."

C. How is this notice organized?

The information presented in this preamble is organized as follows.

V. Background

A. What requirements for Stage II gasoline vapor recovery apply in ozone nonattainment areas?

The requirements in the 1990 CAA Amendments regarding Stage II vapor recovery are contained in Title I: Provisions for Attainment and Maintenance of National Ambient Air Quality Standards. Under CAA section 182(b)(3), Stage II gasoline vapor recovery systems are required to be used at higher throughput GDFs located in Serious, Severe, and Extreme nonattainment areas for ozone.[2] States were required to adopt a Stage II program into their SIPs, and the controls were to be installed according to specified deadlines following state rule adoption.[3] Since the early 1990s, Stage 2 gasoline vapor controls have provided substantial emissions reductions and have contributed to improved air quality over time.

B. Stage II Vapor Recovery Systems

When a gasoline-powered automobile or other vehicle is brought into a GDF to be refueled, the empty portion of the fuel tank on the vehicle contains gasoline vapors. When liquid gasoline is pumped into the partially empty gas tank, gasoline vapors are forced out of the tank and fill pipe as the tank fills with liquid gasoline. Where air pollution control technology is not used, these vapors are emitted into the ambient air. In the atmosphere, these vapors can react with sunlight, nitrogen oxides and other volatile organic compounds to form ozone.

There are two basic technical approaches to Stage II vapor recovery: A "balance" system, and a vacuum assist system. A balance type Stage II control system has a rubber boot around the gasoline nozzle spout that fits snugly up to a vehicle's gasoline fill pipe during refueling of the vehicle. With a balance system, when gasoline in the underground storage tank (UST) is pumped into a vehicle, a positive pressure differential is created between the vehicle tank and the UST. This pressure differential draws the gasoline vapors from the vehicle fill pipe through the rubber boot and the concentric hoses and underground piping into the UST. This is known as a balance system because gasoline vapors from the vehicle tank flow into the UST tank to balance pressures. About 30 percent of Stage II GDFs nationwide use the balance type Stage II system.

The vacuum assist system is the other primary type of Stage II system currently in operation. This type of Stage II system uses a vacuum pump on the vapor return line to help draw vapors from the vehicle fill pipe into the UST. An advantage of this type of system is that the rubber boot around the nozzle can be smaller and lighter (or not used at all) and still draw the vapors into the vapor return hose. This makes for an easier-to-handle nozzle, which is popular with customers. About 70 percent of Stage II GDFs nationwide use the vacuum assist approach.

New Stage II equipment is normally required to achieve 95 percent control effectiveness at certification. However, studies have shown that in-use control efficiency depends on the proper installation, operation, and maintenance of the control equipment at the GDF.[4]

[2] Originally, the section 182(b)(3) Stage II requirement also applied in all Moderate ozone nonattainment areas. However, under section 202(a)(6) of the CAA, 42 U.S.C. 7521(a)(6), the requirements of section 182(b)(3) no longer apply in Moderate ozone nonattainment areas after the EPA promulgated ORVR standards on April 6, 1994, 59 FR 16262, codified at 40 CFR parts 86 (including 86.098–8), 88 and 600. Under implementation rules issued in 2002 for the 1997 8-hour ozone standard, the EPA retained the Stage II-related requirements under section 182(b)(3) as they applied for the now-revoked 1-hour ozone standard. 40 CFR 51.900(f)(5) and 40 CFR 51.916(a).

[3] This requirement only applies to facilities that sell more than a specified number of gallons per month and is set forth in sections 182(b)(3)(A)–(C) and 324(a)–(c). Section 182(b)(3)(B) has the following effective date requirements for implementation of Stage II after the adoption date by a state of a Stage II rule: 6 months after adoption of the state rule, for GDFs built after the enactment date (which for newly designated areas would be the designation date); 1 year after adoption date, for gas stations pumping at least 100,000 gal/month based on average monthly sales over 2-year period before adoption date; 2 years after adoption, for all others.

[4] The Petroleum Equipment Institute has published recommended installation practices [PEI/

Continued

Damaged, missing, or improperly operating components or systems can significantly degrade the control effectiveness of a Stage II system.

In-use effectiveness ultimately depends on the consistency of inspections, follow-up review by state agencies, and actions by operators to perform inspections and field tests and conduct maintenance in a correct and timely manner. The EPA's early guidance for Stage II discussed expected training, inspection, and testing criteria, and most states have adopted and supplemented these criteria as deemed necessary for balance and vacuum assist systems.[5] In some cases, states have strictly followed the EPA guidance but other states bave required a lesser level of inspection and enforcement efforts. Past EPA studies have estimated Stage II in-use efficiencies of 92 percent with semi-annual inspections, 86 percent with annual inspections and 62 percent with minimal or less frequent state inspections.[6] The in-use effectiveness of Stage II control systems may vary from state to state, and may vary over time within any state or nonattainment area because the in-use efficiency of Stage II vapor recovery systems depends heavily on tbe ongoing maintenance and oversight by GDF owners/operators and the state/local agencies.

C. Onboard Refueling Vapor Recovery (ORVR) Systems

In addition to Stage II controls, the 1990 CAA Amendments required another method of controlling emissions from dispensing gasoline. Section 202(a)(6) of the CAA requires an onboard system of capturing vehicle-refueling emissions, commonly referred to as an ORVR system.[7] ORVR consists of an activated carbon canister installed on the vehicle into which vapors are routed from the vehicle fuel tank during refueling. There the vapors are captnred by the activated carbon in the canister. To prevent the vapors from escaping throngh the fill pipe opening, the vehicle employs a seal in the fill pipe which allows liquid gasoline to enter but blocks vapor escape. In most cases, these are "liquid seals" created by the incoming liquid gasoline slightly backing near the bottom of the fill pipe. When the engine is started, the vapors are purged from the activated carbon and into the engine where they are burned as fuel.

The EPA promulgated ORVR standards on April 6, 1994 (59 FR 16262). Section 202(a)(6) of the CAA required that the EPA's ORVR standards apply to light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards were promulgated, and that ORVR systems provide a minimum evaporative emission capture efficiency of 95 percent.

Automobile manufacturers began installing ORVR on new passenger cars in 1998 when 40 percent of new cars were required to have ORVR. The regulation required the percentage of new cars with ORVR increase to 80 percent in 1999 and 100 percent in 2000. The regulation also required that ORVR for light duty trucks and vans (<6000 pounds (lbs) gross vehicle weight rating (GVWR)) was to be phased-in during 2001 with 40 percent of such new vehicles required to have ORVR in 2001, 80 percent in 2002 and 100 percent in 2003. New heavier light-duty trucks (6001–8500 lbs GVWR) were required to have 40 percent with ORVR by 2004, 80 percent by 2005 and 100 percent by 2006. New trucks up to 10,000 lbs GVWR manufactured as a complete chassis were all required to have ORVR by 2006.[8] Complete vehicle chassis for heavy-duty gasoline vehicles between 10,001 and 14,000 lbs GVWR (Class 3) are very similar to those between 8,501 and 10,000 lbs GVWR. For model consistency purposes, manufacturers began installing ORVR on Class 3 complete chassis in 2006 as well. So, after 2006, essentially all new gasoline-powered vehicles less than 14,000 lbs GVWR are ORVR-equipped.

ORVR does not apply to all vehicles, but those not covered by the ORVR requirement comprise a small percentage of the gasoline-powered highway vehicle fleet (approximately 1.5 percent of gasoline consnmption). The EPA estimates that by the end of 2012, more than 71percent of vehicles cnrrently on tbe road will have ORVR.[9] This percentage will increase over time as older cars and trucks are replaced by new models. However, under the current regulatory construct, motorcycles and heavy-duty gasoline vehicles not manufactured as a complete chassis are not required to install ORVR, so it is likely that there will be some very small percentage of gasoline refueling emissions not captured by ORVR controls.

Even prior to the EPA's adoption of ORVR requirements, in 1993 EPA adopted Onboard Diagnostic (OBD) System requirements for passenger cars and light trucks, and eventually did so for heavy-duty gasoline vehicles up to 14,000 lbs GVWR.[10] These systems are designed to monitor the in-use performance of various vehicle emission control systems and components, including protocols for finding problems in the purge systems and large and small vapor leaks in ORVR/evaporative emission controls.[11] OBD II systems were phased in for these vehicle classes over the period from 1994–1996 for lighter vehicles and 2005–2007 for heavy-duty gasoline vehicles, so, during the same time frame tbat manufactnrers were implementing ORVR into their vehicles, they already had implemented or were implementing OBD II systems.

In 2000, the EPA published a report addressing the effectiveness of OBD II control systems.[12] This study concluded that enhanced evaporative and ORVR emission control systems are dnrable and low emitting relative to tbe FTP (Federal Test Procedure) enhanced evaporative emission standards, and that OBD II evaporative emissions checks are a suitable replacement for functional evaporative emission tests in state inspection and maintenance (I/M) programs. OBD system codes are interrogated and evaluated in a 30-vehicle emission I/M program. A recent EPA review of OBD data gathered from I/M programs from five states[13] indicated relatively few vehicles had any evaporative system-related OBD codes that would indicate a potential

RP300–93) and most states require inspectiou, testing, and evaluation before a system is commissioned for use.

[5] "Enforcement Guidance for Stage II Vehicle Refueling Control Programs," U.S. EPA, Office of Air and Radiation, Office of Mobile Sources, December 1991.

[6] "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling at Gasoline Dispensing Facilities Volume I: Chapters," EPA–450/3–91–022a, November 1991. This study is a composite of multiple studies.

[7] Unlike Stage II, which is a requirement only in ozone nonattainment areas, ORVR requirements apply to vehicles everywhere. More detail on ORVR is available at *http://www.epa.gov/otaq/orvr.htm*.

[8] The EPA promulgated ORVR standards for light duty vehicles and trucks on April 6, 1994, 59 FR 16262, codified at 40CFR parts 86 (including 86.098–8), 88 and 600.

[9] *See* EPA Memorandum "Onboard Refueling Vapor Recovery Widespread Use Assessment." A copy of this memorandum is located in tbe docket for this action EPA–HQ–OAR–2010–1076.

[10] *See* Federal Register at 58 FR 9468 published February 19, 1993, and subsequent amendments and the latest OBD regulations at 40 CFR part 86,1806–05 for program requirements in various years.

[11] ORVR systems are basically a subset of evaporative emission systems because they share the same vapor liues, purge valves, purge lines, and activated carbon canister.

[12] "Effectiveness of OBD II Evaporative Emission Monitors—30 Vehicle Study," EPA 420–R–00–018, October 2000.

[13] *See* EPA Memorandum, "Review of Frequency of Evaporative System Related OBD Codes for Five State I/M Programs." A copy of this memorandum is located in the docket for this actiou EPA–HQ–OAR–2010–1076.

problem with the vapor management system.

Based on emissions tests of over 1,100 in-use ORVR-equipped vehicles, EPA concluded that the average in-use efficiency of ORVR is 98 percent. The legal requirement for ORVR is 95 percent efficiency. Thus, the actual reported control achieved in practice is greater than the statutorily required level of control.

D. Compatibility Between Some Vapor Recovery Systems

Even though the per-vehicle vapor recovery efficiency of ORVR exceeds that of Stage II, Stage II vapor recovery systems have provided valuable reductions in ozone precursors and air toxics as ORVR has been phased into the motor vehicle fleet. In fact, overall refueling emissions from vehicle fuel tanks are minimized by having both ORVR and Stage II in place, but the incremental gain from retaining Stage II decreases relatively quickly as ORVR penetration surpasses 75 percent of dispensed gasoline. Please see Table 2 below. This occurs not only because of a decreasing amount of gasoline being dispensed to non-ORVR equipped vehicles, but also because differences in operational design characteristics between ORVR and vacuum assist Stage II systems may in some cases cause a reduction in the overall control system efficiency compared to what could have been achieved relative to the individual control efficiencies of either ORVR or Stage II emissions from the vehicle fuel tank. The problem arises because the ORVR canister captures the gasoline vapor emissions from the motor vehicle fuel tank rather than the vapors being drawn off by the vacuum assist Stage II system. This occurs because the fill pipe seal blocks the vapor from reaching the Stage II nozzle. Thus, instead of drawing vapor-laden air from the vehicle fuel tank into the underground storage tank (UST), the vacuum pump of the Stage II system draws mostly fresh air into the UST. This fresh air causes gasoline in the UST to evaporate inside the UST and creates an internal increase in UST pressure. As the proportion of ORVR vehicles increases, the amount of fresh air, void of gasoline vapors, pumped into the UST also increases. Even with pressure/vacuum valves in place this eventually leads to gasoline vapors being forced out of the UST vent pipe into the ambient air. These new UST vent-stack emissions detract from the overall recovery efficiency at the GDF. As discussed in the proposed rule, the level of these UST vent stack emissions varies based on several factors but can result in a net 1 to 10 percent decrease in overall control efficiency of vehicle fuel tank emissions at any given GDF.[14] The decrease in efficiency varies depending on the vacuum assist technology design (including the use of a mini-boot for the nozzle and the ratio of volume of air drawn into the UST compared to the volume of gasoline dispensed (A/L) ratio), the gasoline Reid vapor pressure, the air and gasoline temperatures, and the fraction of throughput dispensed to ORVR vehicles. There are various technologies that address these UST vent-stack emissions and can extend the utility of Stage II to further minimize the overall control of gasoline vapor emissions at the GDF. These technologies include nozzles that sense when fresh air is being drawn into the UST and stop or reduce the air flow. These ORVR-compatible nozzles are now required in California and Texas. Another solution is the addition of processors on the UST vent pipe that capture or destroy the gasoline vapor emissions from the vent pipe. A number of these systems were presented in comments on the proposed rule. While they may have merit, installing these technologies adds to the expense of the control systems.

E. Proposed Rule To Determine Widespread Use of ORVR

Section 202(a)(6) of the CAA provides discretionary authority to the EPA Administrator to, by rule, revise or waive the section 182(b)(3) Stage II requirement for Serious, Severe, and Extreme ozone nonattainment areas after the Administrator determines that ORVR is in widespread use throughout the motor vehicle fleet. The percentage of non-ORVR vehicles and the percentage of gasoline dispensed to those vehicles grow smaller each year as these older vehicles wear out and are replaced by new ORVR-equipped models. Given the predictable nature of this trend, the EPA proposed a date for ORVR widespread use.

In the Notice of Proposed Rulemaking (NPRM) (76 FR 41731, July 15, 2011), the EPA proposed that ORVR widespread use will occur at the mid-point in the 2013 calendar year, relying upon certain criteria outlined in the proposed rule. This date was also proposed as the effective date for the waiver of the CAA section 182(b)(3) Stage II requirements for Serious, Severe and Extreme ozone nonattainment areas.

The EPA used two basic approaches iu determining when ORVR would be in widespread use in tbe motor vehicle fleet. Both approaches focused on the penetration of ORVR-equipped vehicles in the gasoline-powered highway motor vehicle fleet. The first proposed approach focused on the volume of gasoline that is dispensed into vehicles equipped with ORVR, and compared the emissions reductions achieved by ORVR alone to the reductions that can be achieved by Stage II controls alone. Tbe second approach focused on the fraction of highway motor gasoline dispensed to ORVR-equipped vehicles.

In the proposal, the EPA included Table 1 (republisbed below). Tbis work was based on outputs from EPA's MOVES 2010 motor vehicle emissions model, which showed information related to the penetration of ORVR in the national motor vehicle fleet projected to 2020. These model outputs have been updated for the final rule to be consistent with the latest public release of the model (MOVES 2010a) since that is the version of the model states would use in any future inventory assessment work related to refueling emissions control. Overall, ORVR efficiency was shown in column 5 of Table 1 and was determined by multiplying the fraction of gasoline dispensed into ORVR-equipped vehicles by ORVR's 98 percent in-use control efficiency.

[14] *See* EPA Memorandum "Onboard Refueling Vapor Recovery Widespread Use Assessment." A copy of this memorandum is located in the docket for this ection EPA–HQ–OAR–2010–1076. The level of these UST vent stack emissions varies based on several factors; EPA estimates a 5.4 to 6.4 percentage point decrease in Stage II control efficiency in the 2011–2015 time frame at GDFs employing non-ORVR compatible vacuum assist Stage II nozzles. The decrease in efficiency varies depending on the vacuum assist technology design (inclnding the nse of a mini-boot for the nozzle and the ratio of volume of air drawn into the UST compared to the volume of gasoline dispensed (A/L) ratio), the gasoline Reid vapor pressure, the air and gasoline temperatures, and the fraction of throughput dispensed to ORVR vehicles. The values will increase over time as the fraction of total gasoline dispensed to ORVR vehicles at Stage II GDFs increases.

TABLE 1—PROJECTED PENETRATION OF ORVR IN THE NATIONAL VEHICLE FLEET BY YEAR—BASED ON MOVES 2010

Calendar year	Vehicle population percentage	VMT Percentage	Gasoline dispensed percentage	ORVR Efficiency percentage
1	2	3	4	5
2006	39.5	48.7	46.2	45.3
2007	45.3	54.9	52.5	51.5
2008	50.1	60.0	57.6	56.4
2009	54.3	64.5	62.1	60.9
2010	59.0	69.3	66.9	65.6
2011	63.6	73.9	71.5	70.1
2012	67.9	78.0	75.6	74.1
2013	71.7	81.6	79.3	77.7
2014	75.2	84.6	82.6	80.9
2015	78.4	87.2	85.3	83.6
2016	81.2	89.4	87.7	85.9
2017	83.6	91.2	89.7	87.9
2018	85.6	92.7	91.3	89.5
2019	87.5	93.9	92.7	90.8
2020	89.0	94.9	93.9	92.0

See EPA Memorandum "Onboard Refueling Vapor Recovery Widespread Use Assessment" in the docket (number EPA–HQ–OAR–2010–1076) addressing details on issues related to values in this table.

Note: In this table, the columns have the following meaning.

1. Calendar year that corresponds to the percentages in the row associated with the year.
2. Percentage of the gasoline-powered highway vehicle fleet that have ORVR.
3. Percentage of vehicle miles traveled (VMT) by vehicles equipped with ORVR.
4. Amount of gasoline dispensed into ORVR-equipped vehicles as a percentage of all gasoline dispensed to highway motor vehicles.
5. Percentage from the same row in column 4 multiplied by 0.98.

In the proposal, the EPA estimated that ORVR would need to achieve in-use emission reductions of about 77.4 percent to be equivalent to the amount of control Stage II alone would achieve. This estimate was based on the in-use control efficiency of Stage II systems and exemptions for Stage II for lower throughput GDFs. In the NPRM, the EPA assumed that in areas where basic Stage II systems are used the control efficiency of Stage II gasoline vapor control systems is 86 percent. The use of this value depends on the assumption that daily and annual inspections, periodic testing, and appropriate maintenance are conducted in a correct and timely manner. In addressing comments, we have stated that this efficiency could be nearer to 60% if inspections testing and maintenance are not conducted and there is minimal enforcement.[15]

In the NPRM, the EPA estimated that the percentage of gasoline dispensed in an area that is covered by Stage II controls is 90 percent. Multiplying the estimated efficiency of Stage II systems (86 percent) by the estimated fraction of gasoline dispensed in nonattainment areas from Stage II-equipped gasoline pumps yielded an estimate of the area-wide control efficiency of Stage II programs of 77.4 percent ($0.90 \times 0.86 = 0.774$ or 77.4 percent) for emissions displaced from vehicle fuel tanks.[16] [17] Table 1 indicated this level of ORVR control efficiency is expected to be achieved during calendar year 2013.

In the second approach for estimating when ORVR is in widespread use, we also observed from Table 1 that by the end of calendar year 2012 more than 75 percent of gasoline will be dispensed into ORVR-equipped vehicles. As discussed in the NPRM, the EPA believed that this percentage of ORVR coverage (≥75 percent) is snbstantial enough to inherently be viewed as "widespread" under any ordinary understanding of that term. Furthermore, in Table 1, the percentage of VMT by ORVR-equipped vehicles (column 3) and the amount of gasoline dispensed into ORVR-equipped vehicles (column 4) reached or exceeded 75 percent between the end of year 2011 and end of 2012. The EPA believed this provided further support for establishing a widespread use date after the end of calendar year 2012. Based on the dates derived from these two basic approaches, the EPA proposed to determine that ORVR will be in widespread use by June 30, 2013, or the midpoint of calendar year 2013.

VI. This Action

A. Analytical Rationale for Final Rule

Section 202(a)(6) of the CAA provides discretionary authority to the EPA Administrator to, by rule, revise or waive the section 182(b)(3) Stage II requirement after the Administrator determines that ORVR is in widespread use throughout the motor vehicle fleet. As discussed in the NPRM, the EPA has broad discretion in how it defines widespread use and the manner in which any final determination is implemented. In onr review of the public comments received on the proposal, no commenter indicated that a widespread use determination was inappropriate or took issue with the EPA's two-pronged analytical approach. We have integrated responses to many comments throughout the preamble to

[15] *See*, "Determination of Widespread Use of Onboard Refueling Vapor Recovery (ORVR) and Waiver of Stage II Vapor Recovery Requirements: Summary of Public Comments and Responses." March 2012. Document contained in docket EPA–HQ–OAR–2010–1076.

[16] *See* section 4.4.3 (especially Figure 4–14 and Table 4–4) in "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vahicle Refueling Emissions at Gasoline Dispensing Facilities, Volume I: Chapters," EPA–450/3–91–022a, November 1991. A copy of this document is located in the docket for this action EPA–HQ–OAR–2010–1076. This is based on annual enforcement inspections and on allowable exemptions of 10,000/50,000 gallons per month as described in section 324(a) of the CAA. The EPA recognizes that these two values vary by state and that in some cases actual in-use efficiencies, prescribed exemption levels, or both may be either higher or lower.

[17] AP–42, The EPA's emission factors document, identifies three sources of refueling emissions: Displacement, spillage, and breathing losses. In the EPA Memorandum "Onboard Refueling Vapor Recovery Widespread Use Assessment" (available in the public docket), the EPA determined that for separate Stage II and ORVR refueling events, spillage and breathing loss emission rates are similar. Thus, this analysis focuses on differences in controlled displacement emissions. Compatibility effects related to ORVR and Stage II vacnum assist systems are addressed separately.

this final rule. A more detailed set of responses is in a document titled, "Determination of Widespread Use of Onboard Refueling Vapor Recovery (ORVR) and Waiver of Stage II Vapor Recovery, Summary of Public Comments and Responses" that can be found in the docket, EPA–HQ–OAR–2010–1076.

The analytical approaches used by the EPA to determine the widespread use date are influenced by several key input parameters that affect the estimates of the emission reduction benefits of Stage II alone versus the benefits of ORVR alone and the phase-in of ORVR-equipped vehicles. We received several comments on the assumptions and parameters used by the EPA in the NPRM, and in some cases we have updated the information used in calculations that support the final rule, as discussed in the following paragraphs.

1. ORVR Parameters

• *ORVR efficiency.* The EPA used an in-use control efficiency of ORVR of 98 percent in the proposal. This was based on the testing of 1,160 vehicles drawn from the field. EPA has updated its analysis to include an additional 478 refueling emission test results for ORVR-equipped vehicles that were conducted in calendar years 2010 and 2011. The data set, which now includes over 1,600 vehicle tests for vehicles from model years 2000–2010 with mileages ranging from 10,000 to over 100,000, continues to support the conclusion that the 98 percent in-use efficiency values remain appropriate.[18]

• *Modeling program inputs.* The NPRM relied on EPA's MOVES 2010 model for estimating ORVR vehicle fleet penetration, VMT by ORVR vehicles, and gallons of gasoline dispensed to ORVR vehicles. Since the development of the NPRM, the EPA has publicly released MOVES 2010a. The updated model incorporates many improvements. Those relevant here include updates in ORVR vehicle sales, sales projections, scrappage, fleet mix, annual VMT, and fuel efficiency. The EPA believes that the modeling undertaken to determine the widespread use date for the final rule should employ the EPA's latest MOVES modeling program because it contains updated information that bears on the subject of this rulemaking, and because the EPA expects states to also use it in any state-specific demonstrations supporting future SIP revisions, including revisions that seek to remove Stage II programs.

2. Stage II Parameters

• *Stage II efficiency.* The EPA used an in-use control efficiency of 86 percent for Stage II in the proposal. As discussed above, Stage II control efficiency depends on inspection, testing, and maintenance by GDF owner/operators, and inspection and enforcement by state/local agencies. Typical values range from 62 percent to 86 percent. The public comments referred the EPA to additional reported information directly related to in-use effectiveness of Stage II vapor recovery.[19] The reports indicate that for balance and vacuum-assist type Stage II systems in use in many states today, the in-use effectiveness of Stage II is typically near 70 percent. Nonetheless, the EPA has elected to retain the use of an 86 percent efficiency value in the analyses supporting the final rule. This is because many state programs have included the maintenance and inspection provisions recommended by EPA to achieve this level of efficiency in their initial SIPs that originally incorporated Stage II controls.[20] Current in-use efficiency values may well be lower based on the performance of the Stage II technology itself or for other reasons related to maintenance and enforcement. We are not rejecting the additional information from commenters or the possibility that Stage II efficiency may be lower in some states or nonattainment areas. However, the EPA believes these issues are best examined in the SIP review process. If real in-use efficiency across all existing Stage II programs is, in fact, lower than 86 percent, the EPA's final analysis overestimates the length of time required for emissions reductions from ORVR alone to eclipse the reductions that can be achieved by Stage II alone.

• *Stage II exemption rate.* In sections 182(b)(3) and 324 of the CAA, Congress permitted exemptions from Stage II controls for GDFs of less than 10,000 gallons/month (privates) and 50,000 gallons/month (independent small business marketers). The EPA analysis indicated that these GDF throughput values exempted about 10 percent of annual throughput in any given area. Some states included more strict exemption rates, most commonly 10,000 gallons per month (3 percent of throughput) for both privates and independent small business marketers. A few other states' exemption provisions used values that fell within or outside this range.[21] Of the 21 states and the District of Columbia with areas classified as Serious, Severe, or Extreme for ozone and/or within the Ozone Transport Region, the plurality incorporated exemption provisions in their state regulations, which exempted about 10 percent of throughput.[22] Therefore, we believe it remains reasonable to use that value within this analysis.

• *Compatibility factor for vacuum assist Stage II systems.* The EPA discussed the compatibility factor at length in the NPRM and provided relevant materials in the docket. Several commenters asked that the EPA provide guidance on how the compatibility factor should be incorporated into any similar analysis conducted by a state for purposes of future SIP revisions involving Stage II programs. The magnitude of the compatibility factor for any given area varies depending on ORVR penetration, fraction of vacuum assist nozzles relative to balance nozzles, and excess A/L for vacuum assist nozzles. Two states have adopted measures to reduce this effect through the use of ORVR-compatible nozzles and one state prohibits vacuum assist nozzles completely. Due to these significant variables, the EPA is electing not to include the compatibility factor in the widespread use date determination analysis, but will provide the guidance requested by the commenters for use in making future SIP revisions. To the extent that compatibility emissions across all existing Stage II programs as a whole are significant, the EPA's final analysis overestimates the length of time required for emissions reductions from ORVR alone to eclipse the reductions that can be achieved by Stage II alone.

B. Updated Analysis of Widespread Use

As discussed previously, the EPA has used two approaches for determining

[18] *See* the EPA memorandum "Updated ORVR In-Use Efficiency." A copy of this memorandum is located in the docket for this action EPA–HQ–OAR–2010–1076.

[19] *See* "Draft Vapor Recovery Test Report," April 1999 by CARB and CAPCOA (now cleared for public use), and "Performance of Balance Vapor Recovery Systems at Gasoline Dispensing Facilities", prepared by the San Diego Air Pollution Control District, May 18, 2000. Both reports are available in the public docket.

[20] The EPA report, "Enforcement Guidance for Stage II Vehicle Refueling Control Programs," U.S. EPA, Office of Air and Radiation, Office of Mobile Sources, December 1991, provides basic EPA guidance on what a state SIP and accompanying regulations should include to achieve high efficiency.

[21] There are a few states that limit Stage II exemptions to only GDFs with less than 10,000 gpm throughput, which would exempt about three to five percent of area-wide throughput.

[22] *See* the EPA memorandum "Summary of Stage II Exemption Program Values." A copy of this memorandum is located in the docket for this action in EPA–HQ–OAR–2010–1076.

EXHIBIT 3

RULES and REGULATIONS

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86, 88, and 600

(AMS-FRL-4831-6)

RIN 2060-AC64

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Refueling Emission Regulations for Light-Duty Vehicles and Light-Duty Trucks

Wednesday, April 6, 1994

***16262** AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document contains EPA's final rule implementing the control of vehicle refueling emissions through the use of vehicle-based systems. It applies to light-duty vehicles and light-duty trucks. The rule applies to all fuels used by a vehicle, and includes special provisions for vehicles/fuels judged to be inherently low in refueling emissions. For light-duty vehicles, the requirements begin in the 1998 model year, and phase in over three model years. In the 1998 model year, 40 percent of each manufacturer's light-duty vehicles must meet the requirements. This increases to 80 percent in the 1999 model year and rises to 100 percent in model years 2000 and later. A special provision for phase-in is also included for small volume manufacturers of light-duty vehicles.

This requirement also applies to light-duty trucks. For light-duty trucks with a gross vehicle weight rating of 0-6000 lbs, the requirement begins in model year 2001 and phases-in over three model years at the same rate as applied to light-duty vehicles. For light-duty trucks with a gross vehicle weight rating of 6001-8500 lbs, the requirement commences in model year 2004 and phases-in over three model years at the same rate as light-duty vehicles. The rule does not apply to heavy-duty vehicles.

This rule also establishes certification requirements covering test procedures for integrated and non-integrated control system designs, a refueling emission standard of 0.20 g/gallon and other related certification requirements and provisions. Finally, the rule contains enforcement provisions related to liability, Selective Enforcement Auditing and nonconformance penalties.

EFFECTIVE DATES: This final rule is effective on May 6, 1994.

The new information collection requirements contained in 40 CFR parts 86 and 88 applying to 1998 and later model year vehicles have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. EPA will publish a technical amendment in the Federal Register once the information collection requirements are approved.

ADDRESSES: Materials relevant to this final rule are contained in Public Docket No. A-87-11, located in the Air and

EXHIBIT 4

amended Pub. L. 95-95, title I, § 106, Aug. 7, 1977, 91 Stat. 691.)

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).

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 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to 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 qnality 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 nec-

essary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter;

(D) contain adequate provisions—

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator—

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in section 7603 of this title and adequate contingency plans to implement such authority;

(H) provide for revision of such plan—

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas);

(J) meet the applicable requirements of section 7421 of this title (relating to consultation), section 7427 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection);

(K) provide for—

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover—

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V of this chapter; and

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

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

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 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 pub-

lic notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c) of this section, shall be required to revise an applicable implementation plan because one or more exemptions under section 7418 of this title (relating to Federal facilities), enforcement orders under section 7413(d)[1] of this title, suspensions under subsection (f) or (g) of this section (relating to temporary energy or economic authority), orders under section 7419 of this title (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under section 7413(e)[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) of this section respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term "indirect source" means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of subsection (c)(2)(D)(ii) of this section), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this paragraph the term "indirect source review program" means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations—

(i) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term "transportation control measure" does not include any measure which is an "indirect source review program".

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 7413(d)[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) of this section, or

(B) disapproves a State implementation plan submission in whole or in part,

unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

(2)(A) Repealed. Pub. L. 101–549, title I, §101(d)(3)(A), Nov. 15, 1990, 104 Stat. 2409.

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon June 22, 1974. This subparagraph shall not prevent the Administrator

[1] See References in Text note below.

from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) Repealed. Pub. L. 101–549, title I, § 101(d)(3)(B), Nov. 15, 1990, 104 Stat. 2409.

(D) For purposes of this paragraph—

(i) The term "parking surcharge regulation" means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term "management of parking supply" shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term "preferential bus/carpool lane" shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after June 22, 1974, by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

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

(4) Repealed. Pub. L. 101–549, title I, § 101(d)(3)(C), Nov. 15, 1990, 104 Stat. 2409.

(5)(A) Any measure in an applicable implementation plan which requires a toll or other charge for the use of a bridge located entirely within one city shall be eliminated from such plan by the Administrator upon application by the Governor of the State, which application shall include a certification by the Governor that he will revise such plan in accordance with subparagraph (B).

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after August 7, 1977, be revised to include comprehensive measures to:

(i) establish, expand, or improve public transportation measures to meet basic transportation needs, as expeditiously as is practicable; and

(ii) implement transportation control measures necessary to attain and maintain national ambient air quality standards,

and such revised plan shall, for the purpose of implementing such comprehensive public transportation measures, include requirements to use (insofar as is necessary) Federal grants, State or local funds, or any combination of such grants and funds as may be consistent with the terms of the legislation providing such grants and funds. Such measures shall, as a substitute for the tolls or charges eliminated under subparagraph (A), provide for emissions reductions equivalent to the reductions which may reasonably be expected to be achieved through the use of the tolls or charges eliminated.

(C) Any revision of an implementation plan for purposes of meeting the requirements of subparagraph (B) shall be submitted in coordination with any plan revision required under part D of this subchapter.

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

(f) National or regional energy emergencies; determination by President

(1) Upon application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity that—

(A) a temporary suspension of any part of the applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) may be necessary, and

(B) other means of responding to the energy emergency may be inadequate.

Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) adopted by the State may be issued by the Governor of any State covered by the President's determination under the condition specified in paragraph (2) and may take effect immediately.

(2) A temporary emergency suspension under this subsection shall be issued to a source only if the Governor of such State finds that—

(A) there exists in the vicinity of such source a temporary energy emergency involving high levels of unemployment or loss of necessary energy supplies for residential dwellings; and

(B) such unemployment or loss can be totally or partially alleviated by such emergency suspension.

Not more than one such suspension may be issued for any source on the basis of the same set of circumstances or on the basis of the same emergency.

(3) A temporary emergency suspension issued by a Governor under this subsection shall re-

main 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[2] of this title, as in effect before August 7, 1977, or section 7413(d)[2] 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[2] of this title as in effect before August 7, 1977, or under section 7413(d)[2] 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.

[2] See References in Text note below.

(h) Publication of comprehensive document for each State setting forth requirements of applicable implementation plan

(1) Not later than 5 years after November 15, 1990, and every 3 years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents.

(2) The Administrator may promulgate such regulations as may be reasonably necessary to carry out the purpose of this subsection.

(i) Modification of requirements prohibited

Except for a primary nonferrous smelter order under section 7419 of this title, a suspension under subsection (f) or (g) of this section (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d)[2] of this title (relating to compliance orders), a plan promulgation under subsection (c) of this section, or a plan revision under subsection (a)(3) of this section; no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards

As a condition for issuance of any permit required under this subchapter, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used at such source will enable it to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this chapter.

(k) Environmental Protection Agency action on plan submissions

(1) Completeness of plan submissions

(A) Completeness criteria

Within 9 months after November 15, 1990, the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this chapter.

(B) Completeness finding

Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall deter-

mine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

(C) Effect of finding of incompleteness

Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

(2) Deadline for action

Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

(3) Full and partial approval and disapproval

In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter. If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this chapter until the Administrator approves the entire plan revision as complying with the applicable requirements of this chapter.

(4) Conditional approval

The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

(5) Calls for plan revisions

Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in section 7506a of this title or section 7511c of this title, or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed).

(6) Corrections

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

***(l)* Plan revisions**

Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.

(m) Sanctions

The Administrator may apply any of the sanctions listed in section 7509(b) of this title at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under paragraphs (1) through (4), respectively, of section 7509(a) of this title in relation to any plan or plan item (as that term is defined by the Administrator) required under this chapter, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this chapter relating to such plan or plan item are met. The Administrator shall, by rule, establish criteria for exercising his authority under the previous sentence with respect to any deficiency referred to in section 7509(a) of this title to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in section 7509(a) of this title, such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

(n) Savings clauses

(1) Existing plan provisions

Any provision of any applicable implementation plan that was approved or promulgated by

the Administrator pursuant to this section as in effect before November 15, 1990, shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this chapter.

(2) Attainment dates

For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State—

(A) in response to the promulgation or revision of a national primary ambient air quality standard in effect on November 15, 1990, or

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

shall provide for attainment of the national primary ambient air quality standards within 3 years of November 15, 1990, or within 5 years of issuance of such finding of substantial inadequacy, whichever is later.

(3) Retention of construction moratorium in certain areas

In the case of an area to which, immediately before November 15, 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) of this section (as in effect immediately before November 15, 1990) applied by virtue of a finding of the Administrator that the State containing such area had not submitted an implementation plan meeting the requirements of section 7502(b)(6) of this title (relating to establishment of a permit program) (as in effect immediately before November 15, 1990) or 7502(a)(1) of this title (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately before November 15, 1990, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of section 7502(c)(5) of this title (relating to permit programs) or subpart 5 of part D of this subchapter (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.

(o) Indian tribes

If an Indian tribe submits an implementation plan to the Administrator pursuant to section 7601(d) of this title, the plan shall be reviewed in accordance with the provisions for review set forth in this section for State plans, except as otherwise provided by regulation promulgated pursuant to section 7601(d)(2) of this title. When such plan becomes effective in accordance with the regulations promulgated under section 7601(d) of this title, the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(p) Reports

Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to emission reductions, vehicle miles traveled, congestion levels, and any other information the Administrator may deem necessary to assess the development[3] 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, §§ 101(b)–(d), 102(b), 107(c), 108(d), title IV, § 412, Nov. 15, 1990, 104 Stat. 2404–2408, 2422, 2464, 2466, 2634.)

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, as amended, 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 113(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.

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

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(e), 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 (1)(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.

EXHIBIT 5

§ 51.101 Stipulations.

Nothing in this part will be construed in any manner:

(a) To encourage a State to prepare, adopt, or submit a plan which does not provide for the protection and enhancement of air quality so as to promote the public health and welfare and productive capacity.

(b) To encourage a State to adopt any particular control strategy without taking into consideration the cost-effectiveness of such control strategy in relation to that of alternative control strategies.

(c) To preclude a State from employing techniques other than those specified in this part for purposes of estimating air quality or demonstrating the adequacy of a control strategy, provided that such other techniques are shown to be adequate and appropriate for such purposes.

(d) To encourage a State to prepare, adopt, or submit a plan without taking into consideration the social and economic impact of the control strategy set forth in such plan, including, but not limited to, impact on availability of fuels, energy, transportation, and employment.

(e) To preclude a State from preparing, adopting, or submitting a plan which provides for attainment and maintenance of a national standard through the application of a control strategy not specifically identified or described in this part.

(f) To preclude a State or political subdivision thereof from adopting or enforcing any emission limitations or other measures or combinations thereof to attain and maintain air quality better than that required by a national standard.

(g) To encourage a State to adopt a control strategy uniformly applicable throughout a region unless there is no satisfactory alternative way of providing for attainment and maintenance of a national standard throughout such region.

[61 FR 30163, June 14, 1996]

§ 51.102 Public hearings.

(a) Except as otherwise provided in paragraph (c) of this section and within the 30 day notification period as required by paragraph (d) of this section, States must provide notice, provide the opportunity to submit written comments and allow the public the opportunity to request a public hearing. The State must hold a public hearing or provide the public the opportunity to request a public hearing. The notice announcing the 30 day notification period must include the date, place and time of the public hearing. If the State provides the public the opportunity to request a public hearing and a request is received the State must hold the scheduled hearing or schedule a public hearing (as required by paragraph (d) of this section). The State may cancel the public hearing through a method it identifies if no request for a public hearing is received during the 30 day notification period and the original notice announcing the 30 day notification period clearly states: *If no request for a public hearing is received the hearing will be cancelled; identifies the method and time for announcing that the hearing has been cancelled; and provides a contact phone number for the public to call to find out if the hearing has been cancelled.* These requirements apply for adoption and submission to EPA of:

(1) Any plan or revision of it required by § 51.104(a).

(2) Any individual compliance schedule under (§ 51.260).

(3) Any revision under § 51.104(d).

(b) Separate hearings may be held for plans to implement primary and secondary standards.

(c) No hearing will be required for any change to an increment of progress in an approved individual compliance schedule unless such change is likely to cause the source to be unable to comply with the final compliance date in the schedule. The requirements of §§ 51.104 and 51.105 will be applicable to such schedules, however.

(d) Any hearing required by paragraph (a) of this section will be held only after reasonable notice, which will be considered to include, at least 30 days prior to the date of such hearing(s):

(1) Notice given to the public hy prominent advertisement in the area affected announcing the date(s), time(s), and place(s) of such hearing(s);

(2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located;

(3) Notification to the Administrator (through the appropriate Regional Office);

(4) Notification to each local air pollution control agency which will be significantly impacted by such plan, schedule or revision;

(5) In the case of an interstate region, notification to any other States included, in whole or in part, in the regions which are significantly impacted by such plan or schedule or revision.

(e) The State must prepare and retain, for inspection by the Administrator upon request, a record of each hearing. The record must contain, as a minimum, a list of witnesses together with the text of each presentation.

(f) The State must submit with the plan, revision, or schedule, a certification that the requirements in paragraph (a) and (d) of this section were met. Such certification will include the date and place of any public hearing(s) held or that no public hearing was requested during the 30 day notification period.

(g) Upon written application by a State agency (through the appropriate Regional Office), the Administrator may approve State procedures for public hearings. The following criteria apply:

(1) Procedures approved under this section shall be deemed to satisfy the requirement of this part regarding public hearings.

(2) Procedures different from this part may be approved if they—

(i) Ensure public participation in matters for which hearings are required; and

(ii) Provide adequate public notification of the opportunity to participate.

(3) The Administrator may impose any conditions on approval he or she deems necessary.

[36 FR 22939, Nov. 25, 1971, as amended at 65 FR 8657, Feb. 22, 2000; 72 FR 38792, July 16, 2007]

§51.103 Submission of plans, preliminary review of plans.

(a) The State makes an official plan submission to EPA only when the submission conforms to the requirements of appendix V to this part, and the State delivers five hard copies or at least two hard copies with an electronic version of the hard copy (unless otherwise agreed to by the State and Regional Office) of the plan to the appropriate Regional Office, with a letter giving notice of such action. If the State submits an electronic copy, it must be an exact duplicate of the hard copy.

(b) Upon request of a State, the Administrator will provide preliminary review of a plan or portion thereof submitted in advance of the date such plan is due. Such requests must be made in writing to the appropriate Regional Office, must indicate changes (such as, redline/strikethrough) to the existing approved plan, where applicable and must be accompanied by five hard copies or at least two hard copies with an electronic version of the hard copy (unless otherwise agreed to by the State and Regional Office). Requests for preliminary review do not relieve a State of the responsibility of adopting and submitting plans in accordance with prescribed due dates.

[72 FR 38792, July 16, 2007]

§51.104 Revisions.

(a) States may revise the plan from time to time consistent with the requirements applicable to implementation plans under this part.

(b) The States must submit any revision of any regulation or any compliance schedule under paragraph (c) of this section to the Administrator no later than 60 days after its adoption.

(c) EPA will approve revisions only after applicable hearing requirements of §51.102 have been satisfied.

(d) In order for a variance to be considered for approval as a revision to the State implementation plan, the State must submit it in accordance with the requirements of this section.

[51 FR 40661, Nov. 7, 1986, as amended at 61 FR 16060, Apr. 11, 1996]

EXHIBIT 6

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR - 6 2011

OFFICE OF
AIR AND RADIATION

SUBJECT: Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of "Letter Notices"

FROM: Janet McCabe, Deputy Assistant Administrator
Office of Air & Radiation

TO: Regional Administrators, Regions I – X

The National State Implementation Plan (SIP) Reform Workgroup is a cooperative initiative between EPA, the National Association of Clean Air Agencies (NACAA), and the Environmental Council of the States (ECOS), and includes representatives from Sacramento, California; Linn County, Iowa; Kentucky; Maryland; Nevada; New York; Ohio; South Carolina, Utah and Wisconsin, as well as EPA's Office of Air and Radiation (OAR), EPA Regions I, III and VII and the ECOS and NACAA Headquarters offices. It is facilitated by Jim Blizzard of ECOS, Nancy Kruger of NACAA, and Carey Fitzmaurice of OAR. The ECOS and NACAA memberships have identified a number of SIP-related issues for improving the entire "SIP Process" from the time EPA promulgates a new or revised NAAQS through to the time of formal submittals to Regional Offices for completeness determinations and rulemakings. Given these issues identified by ECOS and NACAA, as well as our own recognition that the SIP process needs to be improved and streamlined, there are a number of ongoing initiatives related to SIP Reform. Many of the ECOS/NACAA-identified SIP reform issues involve EPA providing states and localities the opportunity to participate upfront in such things as designation procedures, implementation rules, and other forms of national SIP guidance related to modeling, weight of evidence (WOE), etc. Tackling these SIP reform issues requires action on the part of OAR, and representatives from OAQPS are actively participating on the Workgroup. However, many of the ECOS/NACAA-identified issues center around Regional consistency. The Regional Air Division Directors and Air Program Managers agree that addressing these issues is primarily the Regions' responsibility.

The purpose of this memorandum is to address the first group of issues identified by the Workgroup. These issues involve consistency between all ten Regional Offices and represent the first increment of success in this collective effort to improve the SIP process. Attachment A's focus is to standardize what every Regional Office requires from its State, Local, and Tribal agencies when those agencies formally submit a SIP revision (hereafter the term State will be used to mean all those agencies formally authorized to submit SIPs and TIPs) and to simplify

those requirements where possible. It addresses the issue raised by ECOS and NACAA urging EPA to reduce the number of hard paper copies required when submitting SIP revisions.

The other attachments to this memorandum cover issues related to the public notice and hearing requirements for SIP revisions, the differences between Clean Data Determinations and Redesignations, and the types of SIP revisions eligible for approval by "Letter Notice" versus full "notice and comment" rulemaking.

Nothing in the attachments to this memorandum is intended to require changes to the Clean Air Act (CAA), the current Code of Federal Regulations (CFR) at 40 CFR Part 51 or Appendix V to Part 51. However, with regard to Attachment A there remains the need to satisfy the requirements of 40 CFR Part 51.103(a) as to the number and types of copies of a SIP revision that must be submitted by the State to EPA. 40 CFR Part 51.103(a) says the State must provide "five hard copies or at least two hard copies with an electronic version of the hard copy (unless otherwise agreed to by the State and Regional Office) of the plan to the appropriate Regional Office with a letter giving notice of such action. If the State submits an electronic copy, it must be an exact duplicate of the hard copy." Given the flexibility afforded in Part 51.103(a), compliance with its requirements can be achieved by each Regional Office having a record of an agreement between the Region and its States that the procedures outlined in Attachment A be followed when submitting a SIP revision. The Office of General Counsel (OGC) has advised that all ten Regions could easily pursue such an agreement with a presumptive letter from each Regional Administrator (RA) to the States in his/her Region, i.e. "We are agreeing to the following procedures for SIP submittals from you, and assume that you agree to these procedures unless we hear otherwise from you by [date]." Such letters would enclose this memorandum and its attachments. A model letter has been developed for use by all ten Regions.

The attachments to this memorandum have the concurrence of all ten Regional Air Division Directors, OAR and OGC. There is consensus among all ten Regions to implement these standardized procedures as quickly as possible via the RA letter described in the preceding paragraph. The ECOS/NACAA members of the National SIP Reform Workgroup were given the opportunity to provide feedback on these procedures and have endorsed their implementation as a significant step in our SIP reform efforts.

There will be additional efforts to address the remaining and any future issues concerning Regional consistency and communications with States. For example, the Regions will work together to develop procedures to:

1. Require the same level of detail and documentation in the technical portions of SIP submittals from all States.

2. Provide early, upfront and consistent guidance to all States regarding how to interpret and meet the requirements of implementation plans and other national rules.

3. Work with Multi-jurisdictional Organizations (MJOs) and Regional Planning Organizations (RPOs) that are performing the technical work (emission inventories, modeling, etc.), developing model rules, and designing SIP templates for their member States such that when the States submit their SIPs that include these

MJO/RPO work products there are no EPA requests for additional submissions and/or revisions late in the SIP submittal process.

The Regional members of the longstanding SIP Processing Work Group (which is separate from the National SIP Reform Workgroup) are contacts to whom questions regarding this memorandum may be addressed. They are as follows:

Region 1 – Donald Cooke
Region 2 – Paul Truchan
Region 3 – Harold Frankford
Region 4 – Nacosta Ward/Sara Waterson
Region 5 – Christos Panos
Region 6 – Carl Young
Region 7 – Jan Simpson
Region 8 – Kathy Dolan
Region 9 – Cynthia Allen/Lisa Tharp
Region 10 – Donna Deneen

cc: Regional Air Division Directors
Regional Air Program Managers
Regional Counsels for Air
OAR Office Directors in OAQPS, OTAQ, and OAP
OGC Air Office
ECOS/NACAA SIP Reform Work Group Members
(for distribution to full memberships)

Attachment A – Number and Types of Copies of SIP Submittals Required to be Submitted

Identified Constraints:

Currently the Federal Courts only recognize the "paper" (hard copy) of the rulemaking docket as the official docket when a SIP approval or disapproval is subject to litigation. The same is true when a Federal enforcement action is taken against a source for a SIP violation. Therefore, at this time, each EPA Regional Office must create and maintain a paper docket, including the State submittal, as well as the E-Docket to upload in the Federal Document Management System (FDMS) for each SIP-related rulemaking. It is also, therefore, necessary for the letter submitting the SIP revision to be a signed, dated paper original letter from the State official authorized to submit SIP revisions.

EPA also needs an electronic copy of the State submittal in searchable.pdf format to load into the FDMS. The Regions are prepared to generate this form of electronic copy in those instances when a State is unable to do so.

SIP Submittals:

1. One paper copy of the SIP revision submitted to EPA by an original, dated letter signed by the State official authorized to submit SIP revisions and addressed to either the Regional Administrator (RA) or the Director of the Air Division in a given Regional Office (provided the RA has delegated the authority to receive SIP revisions to the Air Division Director). Many of the administrative requirements for complete SIP revisions found at 40 CFR Part 51, Appendix V, 2.1, may be met by statements made in the submittal letters.

2. One electronic copy of the entire SIP revision along with the paper copy, preferably on disk, or otherwise made available to the Regional Office e.g., by e-mail, from a File Transfer Protocol (FTP) site or from the State website at the same time the paper copy is submitted. It makes it much easier for EPA if the electronic copy is made available in searchable.pdf format because that is the format required to be uploaded in to the FDMS.

3. In the original, dated paper version of the letter signed by the State official authorized to submit SIP revisions, there must be statement certifying that any electronic copy provided by the State to EPA whether by disk or otherwise made available to the Regional Office is an exact duplicate of the hard copy.

4. If the State is unable to provide an electronic copy in searchable.pdf format, the Regional Office can accept an electronic copy in image.pdf format, Microsoft Word, or Microsoft Excel and convert it to searchable.pdf format to load into the FDMS. Likewise, if a State only submits a paper copy and has no means of making an electronic copy available to EPA, the EPA Regional Office will scan the paper copy and create an electronic copy in searchable.pdf format to load into the FDMS.

5. Even for the single official paper copy identified under number 1. above, States do not have to submit paper copies of large data files such as ambient air quality data, emissions inventories, model input files, etc. if the State puts such supporting data files on a disk (or disks) and submits the disk along with the paper copy. Such disks should be submitted with the official paper copy in order for the official SIP submittal to be complete. EPA cannot "complete" the official submittal for the State by accessing such data files from an e-mail, FTP or website.

5. "Model" SIP submittal letters are available from the Regional Offices.

Caveats:

1. EPA is able to "retrieve" the "unofficial" electronic copy via e-mail, from an FTP or a state website only because the State submitted the official paper copy. Whatever material EPA receives via e-mail or accesses from an FTP or website is not the official submittal.

2. The State should identify any copyrighted material in its submittal as EPA does not place such material on the web when creating the E-Docket for loading into FDMS.

3. States are urged not to include any material considered Confidential Business Information (CBI) in their SIP submittals. In rare instances where such information is necessary to justify the control requirements and emission limitations established by the SIP revision (e.g., for a source-specific SIP revision), States should confer with their Regional Offices prior to submittal and must clearly identify such material as CBI in the submittal itself. EPA does not place such material in either the paper docket or the web when creating the E-Docket for loading into FDMS. However, where any such material is considered emissions data within the meaning of Section 114 of the CAA, it cannot be withheld as CBI and must be made publically available.

Notes: The use of STAG (105) funds by States to purchase the software/equipment needed to create electronic copies in searchable.pdf format is an acceptable expense, and many States have opted to do so. A State may indicate such purchases in the appropriate portion of its 105 grant application.

Future Activities: EPA is committed to work with the Department of Justice to continue to pursue options for reducing and eventually eliminating the paper (hardcopy) submittals of SIP revisions in favor of electronic submittals.

Attachment B – Public Notices/Hearings Required by Sec. 110 of the CAA

Identified Constraints:

As explained below, EPA has made significant reforms in the SIP process regarding public notices and public hearings. However, States may implement these reform opportunities only to the extent allowed by State law because a basic requirement for an approvable SIP revision is that it was developed and adopted by the State agency in accordance with such law and its legal authority.

Public/Notice Hearing:

1. The public notice and public hearing requirements for SIP revisions are found at 40 CFR Part 51.102. These Federal regulations indicate that the State must afford the opportunity to submit written comments and allow the public to request a public hearing either by announcing a hearing in the notice for comments or by providing the opportunity to request a hearing in that notice. Each State must have legal authority setting out its public notice procedures and EPA has already approved these procedures as meeting the minimum requirements of the CAA.

2. EPA has determined that the term "prominent advertisement" as used in 40 CFR Part 51 when referring to the public notice required by Section 110 of the CAA for SIP revisions is media neutral. The State may continue the use of newspapers to publish these notices or may opt to publish such notices elsewhere so long as the State has determined that the public would have routine and ready access to such alternative publishing venues. States may also choose a combination approach whereby a short (and presumably less expensive) notice is published in a newspaper that informs the public where to access the complete public notice that satisfies all of 40 CFR Part 51 requirements.

3. EPA recognizes that many States use a single public notice and hearing to satisfy their own State adoption process requirements, Section 110 of the CAA and 40 CFR Part 51. This has long been and continues to be an acceptable practice. However, in order to satisfy the CAA and 40 CFR Part 51, the notice must clearly state that the regulations and/or documents that are the subject of the public notice will be submitted to the United States Environmental Protection Agency to be included in or to revise the State Implementation Plan required by the Clean Air Act and should identify the CAA requirements the revisions are intended to meet. Unless the public notice includes this statement, Section 110 of the CAA has not been satisfied.

4. The regulations provide that any public hearing must be announced in a public notice at least 30 days prior to the hearing, and that notice must include the date, place, and time of the public hearing. If the State receives a request for a public hearing, it must hold the already scheduled hearing as described in the original public notice or schedule a public hearing through a separate notice. To avoid having to re-publish a second notice to provide 30 days advance notice of a public hearing, States are strongly encouraged to schedule a public hearing in the original public notice. Under 40 CFR part 51.102(a), the

State may cancel the public hearing if no request for a public hearing is received during the 30-day notification period, so long as the original public notice announcing the 30-day notification period clearly states: *If no request for a public hearing is received, the hearing will be cancelled; identifies the method and time for announcing that the hearing has been cancelled; and provides a contact phone number for the public to call to find out if the hearing has been cancelled.*

3. Pursuant to the regulations, the entire SIP revision must be made available for public review and comment including supporting technical materials and other information the State has relied upon or intends to rely upon to justify the approvability of the SIP revision.

Caveats:

As noted above, States often publish a single public notice and hold a single public hearing to satisfy State requirements for adoption of State rules/regulations as well as Section 110 of the CAA and 40 CFR Part 51 requirements. This usually means that the public notice and hearing are held on a proposed state rule/regulation. Two important points:

1. There is no independent Federal requirement that the public notice and hearing required by Section 110 of the CAA or 40 CFR Part 51 be held on proposed State regulations. However, 40 CFR Part 51, Appendix V, 2.1 (e) requires that the State must have followed all of the procedural requirements of the State's law and constitution in conducting and completing adoption/issuance of the SIP revision. So if State law requires public notice and hearing at the proposed stage of regulation adoption, then public notice must be given and hearing must be held on proposed regulations to satisfy 40 CFR Part 51.

   EPA is aware that under State law certain types of SIP regulations are not required to undergo public notice and hearing procedures as part of the State adoption process. In such instances, the public notice and hearing requirements of 40 CFR Part 51.102 may be held on fully adopted State regulations. The Federal requirement for public notice and hearing is to inform the public that the SIP is being revised and allow for comment as to whether the State regulations satisfy a specific obligation under the CAA.

2. The Federal requirement for public notice and hearing is to inform the public that the State intends certain regulations and other actions to fulfill specific CAA requirements and thus to revise the SIP. So if a regulation is significantly changed by the State between the time of proposal and final adoption, it may be necessary for the State to conduct the public participation procedures required by 40 CFR Part 51.102 on the final regulations being submitted as a SIP revision.

Notes: EPA Regional Offices will provide "model" public notices for States to use satisfy Section 110, and 40 CFR Part 51.102 upon request.

Attachment C – Determinations of Attainment by an Area's Attainment Date v. Clean Data Determinations & Redesignation Requests and Maintenance Plans

Introduction: The issue of Redesignations v. Clean Data Determinations and what a State must provide to an EPA Regional Office for each type of submittal has been raised by the States to EPA for both clarification and Regional consistency. These are very different types of actions and achieve different results as explained in this Attachment.

There is also a distinction between a Determination of Attainment by an area's attainment date and a Clean Data Determination which is explained below.

The Distinction between a Determination of Attainment by an Area's Attainment Date and a Clean Data Determination

It is important to distinguish between two different types of attainment determinations that EPA makes for areas that are designated nonattainment. Both types require notice-and-comment rulemaking.

(1) Determinations of Attainment by an area's attainment date, and
(2) Determinations of Attainment for purposes of suspending the State's obligation to submit certain planning SIPs linked to attainment (so-called Clean Data Determinations).

With respect to Type 1, the Clean Air Act requires EPA to determine whether a nonattainment area has attained the standard as of its applicable attainment date. These Determinations of Attainment provide a historical snapshot -- they evaluate attainment only as of an area's attainment deadline, and are issued to comply with Section 181(b)(2) for ozone and Sections 172 and 179 for $PM_{2.5}$. Determinations of Attainment by an attainment deadline are separate and independent of the second type of attainment determinations, Clean Data Determinations, which are not compelled by the CAA.

With respect to Type 2, Clean Data Determinations originated in EPA's Clean Data Policy, but are now linked to EPA regulations. These determinations invoke either 40 CFR Part 51.918 for ozone or 51.1004(c) for $PM_{2.5}$. Unlike determinations by an attainment deadline, Clean Data Determinations are subject to revision based on changes in air quality, and must be sustained by continuing attainment. They function to suspend a State's obligation to submit certain attainment-related planning SIP obligations for a designated nonattainment area. The suspension continues until EPA determines that a violation has occurred, or EPA redesignates the area from nonattainment to attainment.

These two types of determinations are conceptually and legally distinct. They arise from different authorities and result in different consequences. However, they both address air quality and can be based on the same or overlapping years of air quality data.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 2 2 2011

SUBJECT: Guidelines for Preparing Letters Submitting State Implementation Plans (SIPs) to EPA and for Preparing Public Notices for SIPs

FROM: Janet McCabe, Deputy Assistant Administrator
Office of Air & Radiation

Becky Weber, Director
Air & Waste Management Division, Region 7

TO: Air Division Directors, Regions 1-10

The purpose of this memorandum is to transmit two guideline documents for the preparation of State Implementation Plans (SIPs) as part of the cooperative initiative between the Environmental Council of the States (ECOS), the National Association of Clean Air Agencies (NACAA), and EPA. Those documents, "Guidelines to State Agencies for Preparing Letters to Submit State Implementation Plan (SIP) Revisions to the EPA Regional Offices," and "Guidelines to State Agencies for Preparing Public Notices for State Implementation Plan (SIP) Revisions," are attached. These guidelines were developed as supporting material to the April 6, 2011, memorandum, "Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of Letter Notices." These guideline documents have been reviewed by the SIP Processing Work Group, the Office of Air and Radiation (OAR), the Office of General Counsel (OGC), the Regional Air Program Managers (APMs) and the NACAA/ECOS SIP Reform Work Group.

Please make these documents available to your states and engage with them regarding the principles and procedures outlined in the guidelines which we hope will improve future SIP development, submission, review, and final action.

Questions regarding this memorandum may be addressed to:

Region 1 – Donald Cooke
Region 2 – Paul Truchan
Region 3 – Harold Frankford
Region 4 – Nacosta Ward/Sara Waterson
Region 5 – Christos Panos
Region 6 – Carl Young
Region 7 – Jan Simpson
Region 8 – Kathy Dolan
Region 9 – Cynthia Allen/Lisa Tharp
Region 10 – Donna Deneen

Attachments

cc: Regional Air Program Managers
Regional Counsels for Air
OAR Office Directors in OAQPS, OTAQ, and OAP
Air and Radiation Legal Office (ARLO) in OGC
EPA National SIP Reform Work Group Members
ECOS/NACAA National SIP Reform Work Group Members
(for distribution to full memberships)

Attachment A

Guidelines to State Agencies for Preparing Letters to Submit State Implementation Plan (SIP) Revisions to EPA Regional Offices

Introduction: The letter prepared by a State for submitting a SIP revision to an EPA Regional Office has a considerable impact on how quickly a SIP revision may be assigned and determined complete or incomplete, as well as on its approvability and the speed at which EPA can commence the rulemaking process. As part of the SIP reform efforts to avoid SIP processing backlogs and to expand upon implementation of Attachment A of the April 6, 2011 McCabe memo, this document provides guidance to State agencies responsible for preparing SIP submittal letters. Throughout these guidelines, the term "State" is used to refer to any State, Territory, Local, and Tribal agency with the authority to submit SIP revisions to EPA.

General Guidelines to Expedite the Review of SIP Revisions

1. **Avoid the Use of a Single Letter to Submit Multiple SIP Revisions:** There are times when a State uses one SIP submittal letter to transmit multiple SIP revisions to an EPA Regional Office. While this is permissible under the Clean Air Act (CAA), it can cause delays in the Region's ability to process those SIP revisions. This is especially true when the multiple SIP revisions submitted by a single letter address a variety of subject matter and/or seek to satisfy a number of different CAA requirements.

   While some States may believe submitting multiple SIP revisions to EPA using a single SIP submittal letter will get all those in the processing cue faster, such "single" submittals can actually slow down SIP processing times, for the reasons explained below.

Reasons for Delays Include:

a) It is unlikely that the EPA Region is going to use a single rulemaking to process SIPs of differing subject matter or assign SIPs of differing subject matter to the same EPA staff person. Accordingly, when the State uses a single SIP submittal letter to transmit multiple revisions of differing subject matter to EPA, that submittal must first be reviewed to determine the number of different Federal rulemakings to take and to which SIP staff to assign the various SIP revisions. For each separate rulemaking, a paper docket/administrative record must be created. Similarly, the Region must create a separate E-Docket for each rulemaking requiring that each SIP revision be uploaded into the Federal Document Management System (FDMS) separately. These administrative procedures may delay the assigning of SIP revisions for a week or more depending upon the number of SIP revisions submitted under a single letter.

b) EPA has found that when a State uses a single SIP submittal letter to submit multiple SIP revisions addressing differing subject matter, the submission may include the information necessary for completeness and approval of one of the SIP revisions but not for all of them. The lack of completeness information for all revisions means that EPA has to carefully explain which portions of the submittal are incomplete and return the submittal to the State for certain SIP revisions, but also explain that other revisions have been determined complete and thus retained for processing.

c) When a State submits multiple revisions under a single submittal letter, each Federal Register notice prepared for any one of the multiple revisions has to explain that while multiple revisions were submitted, this rulemaking notice only takes action on "x" while "y" and "z" will be the subject of separate rulemakings. This can be confusing and result in public comments that do not actually address the revision covered in that proposed rulemaking, which can delay final rulemaking.

Recommendation and Request to States: Please prepare a separate SIP submittal letter for each SIP revision. Your SIP submittal is more likely to include all of the materials necessary to satisfy 40 CFR Part 51 Appendix V, the April 6, 2011 McCabe memo, and the substantive requirements of the CAA when only having to do so for one SIP revision.

Note: It is acceptable to use a single SIP submittal letter for several SIP revisions of the same subject matter. One such example would be using a single SIP letter to submit several reasonably available control technology (RACT) regulations for the same NAAQS pollutant and its precursors such as multiple VOC RACT regulations for an ozone nonattainment area(s).

2. **Avoid Requesting Delegation of Non-SIP Programs or Standards in the Same Letter Used to Submit a SIP Revision:** EPA realizes that in order for many States to request the delegation of authority for Federal regulations such as a New Source Performance Standard under 40 CFR Part 60, the State must first adopt the Part 60 rules by reference or adopt some form of State authority to implement the Federal rule. However, when a State combines notifying EPA that it has adopted such Federal regulations or standards and/or requests NSPS delegation for them in the same letter used to submit a SIP revision, there will be significant delays in processing that SIP and in the complexity of the rulemaking. This delay occurs because EPA has to explain why the request for delegation is not part of the SIP rulemaking action, and even with such an explanation, the Region may still receive public comments addressing the delegation issue, which can further delay the final rulemaking.

Requirements for the Letters Prepared by States for Submitting SIP Revisions to EPA

1. **The SIP Submittal Letter Must Be Signed by the State Official Designated by the Governor to Submit SIP Revisions to EPA:** In addition, the SIP submittal letter must be addressed to the EPA Regional Administrator (RA) or the Regional Air Division Director (ADD) if the RA has delegated that authority to the ADD to accept SIP revision submittals. Even if the ADD has been delegated the authority by the RA, it is always acceptable for a State to address a SIP revision submittal letter to the RA. Anything submitted by the State after the original submittal that the State wishes for EPA to consider in its decision to approve or disapprove the SIP revision must also be submitted to the RA (or the duly delegated ADD) by the State Official designated by the Governor to submit SIP revisions to EPA.

2. **The SIP Submittal Letter Must Clearly Identify the Portions of a State Regulation(s) or Document that the State is Requesting for Approval as a SIP Revision:** There are times when a State submits a regulation or some other State enforceable document for approval as a SIP revision that includes provisions that are unrelated or unnecessary to satisfy the CAA and applicable Federal requirements; or certain provisions that the State does not intend to be considered to be part of its SIP revision request. Unless the State is requesting approval of the entire regulation or document, the SIP submittal letter must clearly delineate which specific provisions of such a regulation or document the State is requesting be approved as part of its SIP and which are not. When the State does so, there is no need for EPA to discuss those provisions in its rulemaking notices.

   However, when a State submits an entire regulation, including provisions for which EPA has no authority to approve as part of a SIP, and the State does not indicate that it is not including those provisions in its SIP revision request; EPA has no option other to consider the entire regulation or document part of the SIP revision request. Therefore, EPA must explain in its rulemaking notices which provisions it is approving and which provisions on which it is taking no action and why. In our experience, this can invite unnecessary public comments on our proposed rulemaking (objecting to our taking no action) and delay final rulemaking action while responses to comments are prepared. If the commenters continue to object to our taking no action, they may file litigation on our final approval.

3. **SIP Submittal Letter Requirements Specifically to Implement Attachment A of the April 6, 2011 McCabe Memo:**

a) States are required to enclose only one paper copy of the SIP revision with the original dated letter signed by the State official authorized to submit SIP revisions. As stated previously, the submittal letter must be addressed to either the RA or the ADD in a given Regional Office (provided the RA has delegated the authority to receive SIP revisions to the ADD).

b) The SIP submittal letter must include a statement that the electronic copy provided by the State to EPA whether by disk or otherwise made available to the Regional Office is an exact duplicate of the hard copy.

   The SIP submittal letter must include language explaining how and where the electronic copy of the entire SIP revision is being provided to the EPA Regional Office, e.g., on a disk(s) actually enclosed with the SIP submittal letter and the one hard copy, by e-mail (to whom, from whom and the date it was sent), from a designated File Transfer Protocol (FTP) site, or from a State website.

   In those instances where the electronic copy of the SIP submittal also includes additional disks of lengthy data files that are required to be submitted with the hard copy (for completeness), but are no longer required be printed out as part of hard copy submittal, the State submittal letter must amend the statement discussed above to explain that certain data files included on the disk(s) are not included in hardcopy. (i.e., the statement must say that the electronic copy includes an exact duplicate of the hard copy as well as additional data files supporting the submittal, with a brief description of what information these data files contain).

c) When the electronic copy is provided on a disk(s) enclosed with the SIP submittal letter and the hard copy, the processing of the SIP will be faster. Likewise when the electronic copy of the SIP revision is made available to the EPA Regional Office in searchable portable document format (PDF), processing the SIP will be faster because that is the format required to be uploaded by EPA into FDMS. However, if the State is unable to provide an electronic copy in searchable.PDF format, the Regional Office can accept an electronic copy in image.PDF format, or as a Microsoft Word document and convert it to searchable.PDF format to load into FDMS. In the unlikely event that a State can only submit a paper copy and has no means of making an electronic copy available to EPA, the State's SIP submittal letter must include a statement to that effect. The EPA Regional Office will then scan the paper copy and create an electronic copy in searchable.PDF format to load into FDMS.

Certain Administrative Requirements for Complete SIP Revisions Found at 40 CFR Part 51, Appendix V, 2.1, that May be Addressed by Language Included in the SIP Submittal Letter

The State may use the SIP submittal letter to summarize the "evidence" included in the submittal of certain administrative authorities required for a SIP revision to be determined complete. For example, the SIP submittal letter may include statements and applicable citations that:

a) The State adopted a regulatory SIP revision in the State code or body of regulations or issued the permit, order, or consent agreement in final form, including the date of adoption or final issuance as well as the effective date if it is different from the adoption/issuance date. Official copies of these regulations or documents must be included in the SIP submittal. When those regulations or documents themselves include all of this information regarding adoption/ issuance and effective date, it is not necessary to also include it in the SIP submittal letter, but States may opt to do so.

b) The State has the necessary legal authority under State law to adopt and implement whatever is being submitted as a SIP revision (include citations). When those regulations or documents themselves include all of this information regarding the necessary legal authority under State law to adopt and implement whatever is being submitted as a SIP revision (including citations), it is not necessary to also include it in the SIP submittal letter, but States may opt to do so.

c) The submittal includes an official copy of the actual and enforceable regulation or document submitted for approval and incorporation by reference into the SIP.

d) The submittal includes indication of the changes made (such as a redline/ strikethrough version) to the existing approved SIP, where applicable.

e) The submittal includes the effective date of the regulation/document that the State is requesting be SIP approved. Whenever possible the effective date is to be indicated in the document itself. When those regulations or documents themselves include this information, it is not necessary to include statements to that effect in the SIP submittal letter, but States may opt to do so.

f) The State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the SIP revision. If this evidence is provided elsewhere in the SIP revision submittal, it is not necessary to include statements to that effect in the SIP submittal letter, but States may opt to do so.

g) The State provided public notice of the proposed revision to the SIP in accordance with procedures approved by EPA including the date of such notice. As States actually include a copy of the public notice in their SIP revision submittals, it is not necessary to also include this statement in the SIP submittal letter, but States may opt to do so.

h) A statement that the SIP submission includes certification that the public hearing was held in accordance with the public notice and State laws and constitution and the public hearing requirements of 40 CFR 51.102. When a copy of the actual public hearing certification is included in the SIP submittal, it is not necessary to also include this statement in the SIP submittal letter, but States may opt to do so. Alternatively, the submittal letter may include a statement that no public hearing was held because no one requested one pursuant to the State providing the opportunity for such a hearing in the public notice.

i) The SIP revision includes either a compilation of the public comments received by the State and the State's responses, or a statement that no public comments were submitted to the State pursuant to the public notice and no testimony was offered at a public hearing. If this evidence is provided elsewhere in the SIP revision submittal, it is not necessary to include statements to that effect in the SIP submittal letter, but States may opt to do so.

Attachment B

Guidelines to States Agencies for Preparing the Public Notices for State Implementation Plan (SIP) Revisions

Introduction: This is a set of guidelines for what must be included in a public notice published by the State to satisfy the 110(a)(1) and (2) requirements of the Clean Air Act (CAA), 40 CFR Part 51.102; and to implement Attachment B of the April 6, 2011 McCabe memo.

As noted in the April 6, 2011 McCabe memo, the public notice and public hearing requirements for SIP revisions are found at 40 CFR Part 51.102. These Federal regulations indicate that the State must afford the opportunity to submit written comments and allow the public to request a public hearing either by announcing a hearing in the public notice for comments or by providing the opportunity to request a hearing in that notice. The April 6, 2011 McCabe memo also states that EPA has determined that the term "prominent advertisement" as used in 40 CFR Part 51 when referring to the public notice required by Section 110 of the CAA for SIP revisions is media neutral. The State may continue the use of newspapers to publish these notices or may opt to publish such notices elsewhere so long as the State has determined that the public would have routine and ready access to such alternative publishing venues. States may also choose a combination approach whereby a short (and presumably less expensive) notice is published in a newspaper that informs the public where to access the complete public notice that satisfies all of the CAA and 40 CFR Part 51.102 requirements.

States may always request that the EPA Regional Office review its public notice in draft to ensure that EPA will find that it has satisfied 40 CFR Part 51.102 at the time the SIP revision is formally submitted.

What to Include in the Public Notice Informing the Public That the SIP Is Being Revised

1. The notice must include a statement that the regulations and/or documents that are the subject of the public notice will be submitted to the United States Environmental Protection Agency (EPA) to be included in or to revise the State Implementation Plan (SIP) required by the Clean Air Act.

   The public notice may include a statement(s) identifying the CAA requirements the regulations and /or documents are intended to meet. However, EPA advises that when identifying the CAA requirements that the regulations and /or documents are intended to meet, the State should do so in broad terms rather than by very specific and lengthy CAA citations. EPA offers this advice to avoid situations where by the State's notice is so specific it inadvertently omits part of a citation or mistakenly cites to the wrong provision.

   Examples: The public notice published by the State when announcing it will be adopting and submitting volatile organic compound (VOC) reasonably available control technology (RACT) regulations to EPA for approval and incorporation into the SIP could state that these regulations are being submitted to satisfy the CAA's requirements for sources located in ozone nonattainment areas.

When publishing a public notice for a SIP revision not specifically required by the CAA, the State may describe the regulation and/or document (for example a Consent Agreement for a specific source) and state it is being submitted to EPA for approval as a revision to reduce emissions of (name the pollutants) to attain and maintain the National Ambient Air Quality Standards promulgated by EPA to protect public health and the environment pursuant to its authority under the CAA.

2. When the State is using the same public notice to satisfy its own State requirements for public notice for additional regulations that it will not be submitting to EPA as SIP revisions, it is extremely important to inform the public which regulations will be submitted for inclusion in the SIP and which will not.

3. There are times when a State makes an entire regulation and/or document the subject of its public notice, but will not be requesting that EPA approve the entire regulation and or document as a SIP revision. When that is the case, the public notice must explain that while the State will be adopting the entire regulation and /or document, it will only be submitting (describe or list what will be submitted) to EPA for approval and incorporation into the SIP.

4. The public notice must announce any public hearing at least 30 days prior to the hearing, and that notice must include the date, place, and time of the public hearing. If the State receives a request for a public hearing, it must hold the already scheduled hearing as described in the original public notice or schedule a public hearing through a separate notice.

   To avoid having to re-publish a second notice to provide 30 days advance notice of a public hearing, States are strongly encouraged to schedule a public hearing in the original public notice. Under 40 CFR section 51.102(a), the State may cancel the public hearing if no request for a public hearing is received during the 30-day notification period, so long as the original public notice announcing the 30-day notification period clearly states: If no request for a public hearing is received, the hearing will be cancelled; identifies the method and time for announcing that the hearing has been cancelled; and provides a contact phone number for the public to call to find out if the hearing has been cancelled.

5. The public notice must include the means by which interested persons may submit comments, to whom and the deadline for doing so.

An example Public Notice is provided below:

MARYLAND DEPARTMENT OF THE ENVIRONMENT
AIR & RADIATION MANAGEMENT ADMINISTRATION
NOTICE OF PUBLIC HEARING

The Maryland Department of the Environment gives notice of a public hearing concerning the following proposed revisions to Maryland's State Implementation Plan (SIP):

1. The addition of relevant portions of the 2011 GenOn Chalk Point Consent Decree (effective on 3/10/11); and

2. Removal of the PEPCO 1978 and 1979 Consent Orders.

The relevant portions of the 2011 GenOn Chalk Point Consent Decree are being submitted to the United States Environmental Protection Agency for approval and incorporation into the Maryland SIP because they will result in a significant decrease in emissions of particulate matter, sulfur oxides and nitrogen oxides to attain and maintain the National Ambient Air Quality Standards promulgated by EPA to protect public health and the environment pursuant its authority under the CAA.

The full text of these Consent Decrees/Orders and the technical support document for this SIP action are available for public review on the Maryland Department of the Environment's website at the following address: http://www.mde.state.md.us/aboutmde/pages/reqcomments.aspx

These documents are also available for review at the following locations: the Air and Radiation Management Administration; regional offices of the Department in Cumberland and Salisbury; all local air quality control offices; and local health departments in those counties not having separate air quality control offices.

A public hearing on this action will be held on August 31, 2011 at 10 a.m. at the Department of the Environment, 1800 Washington Boulevard, 1st Floor Conference Room, Baltimore, Maryland 21230-1720. *[The public notice may also include the following: If no request for a public hearing is received by (include a date), the hearing will be cancelled. Notification as to whether the hearing has been cancelled may be found on (provide the state agency website). Interested persons may also contact (name and phone number) to learn if the hearing has been cancelled.]*

Interested persons are invited to attend and express their views. Comments may be mailed to Deborah Rabin, Regulations Coordinator, Air and Radiation Management Administration, Department of the Environment, 1800 Washington Boulevard, Suite 730, Baltimore, Maryland 21230-1720, or emailed to drabin@mde.state.md.us, or faxed to (410) 537-4223. Comments must be received not later than **August 31, 2011**, or be submitted at the hearing. For more information, call Deborah Rabin at (410) 537-3240.

Anyone needing special accommodations at a public hearing should contact the Department's Fair Practices Office at (410) 537-3964. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

GEORGE S. ABURN, JR.
Director
Air & Radiation Management Administration

Date:

The following also appeared on MDE's website:

The Maryland Department of the Environment gives notice of a public hearing concerning the following proposed revisions to Maryland's State Implementation Plan:

The Maryland Department of the Environment gives notice of a public hearing concerning proposed revisions to Maryland's State Implementation Plan:

1. The addition of relevant portions of the 2011 GenOn Chalk Point Consent Decree (effective on 3/10/11); and (See GenOn Consent Decree) (See Technical Support Document)

2. Removal of the PEPCO 1978 and 1979 Consent Orders. (See PEPCO Consent Orders)

The full text of these Consent Decrees/Orders and the technical support document regarding this action are attached to this hearing notice.

These documents are also available for review at the following locations: the Air and Radiation Management Administration; regional offices of the Department in Cumberland and Salisbury; all local air quality control offices; and local health departments in those counties not having separate air quality control offices.

A public hearing on this action will be held on **August 31, 2011,** at 10 a.m. at the Department of the Environment, 1800 Washington Boulevard, 1st Floor Conference Room, Baltimore, Maryland 21230-1720.

Interested persons are invited to attend and express their views. Comments may be mailed to Deborah Rabin, Regulations Coordinator, Air and Radiation Management Administration, Department of the Environment, 1800 Washington Boulevard, Suite 730, Baltimore, Maryland 21230-1720, or emailed to drabin@mde.state.md.us, or faxed to (410) 537-4223. Comments must be received not later than August 31, 2011, or be submitted at the hearing. For more information, call Deborah Rabin at (410) 537-3240.

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GEORGE S. ABURN, JR.
Director
Air & Radiation Management Administration