

politan statistical area or part thereof with a population of 100,000 or more comply with the provisions of section 7511a(c)(2)(A) of this title (pertaining to enhanced vehicle inspection and maintenance programs); and

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

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

**(c) Additional control measures**

**(1) Recommendations**

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

**(2) Notice and review**

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

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

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

**(3) Consultation**

In undertaking the review required under paragraph (2)(B), the Administrator shall con-

sult with members of the commission of the affected States and shall take into account the data, views, and comments received pursuant to paragraph (2)(A).

**(4) Approval and disapproval**

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

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

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

**(5) Finding**

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

**(d) Best available air quality monitoring and modeling**

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

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

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

**(a) General rule**

Each implementation plan revision required under section 7511a(d) and (e) of this title (relating to the attainment plan for Severe and Extreme ozone nonattainment areas) shall provide that, if the area to which such plan revision applies has failed to attain the national primary

<sup>1</sup> So in original. Probably should not be capitalized.

<sup>2</sup> So in original. Probably should be "this".

ambient air quality standard for ozone by the applicable attainment date, each major stationary source of VOCs located in the area shall, except as otherwise provided under subsection (c), pay a fee to the State as a penalty for such failure, computed in accordance with subsection (b), for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. Each such plan revision should include procedures for assessment and collection of such fees.

**(b) Computation of fee**

**(1) Fee amount**

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

**(2) Baseline amount**

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

**(3) Annual adjustment**

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

**(c) Exception**

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

**(d) Fee collection by Administrator**

If the Administrator has found that the fee provisions of the implementation plan do not meet the requirements of this section, or if the Administrator makes a finding that the State is not administering and enforcing the fee required under this section, the Administrator shall, in addition to any other action authorized under this subchapter, collect, in accordance with procedures promulgated by the Administrator, the unpaid fees required under subsection (a). If the Administrator makes such a finding under section 7509(a)(4) of this title, the Administrator may collect fees for periods before the determination, plus interest computed in accordance

with section 6621(a)(2) of title 26 (relating to computation of interest on underpayment of Federal taxes), to the extent the Administrator finds such fees have not been paid to the State. The provisions of clauses (ii) through (iii) of section 7661a(b)(3)(C) of this title (relating to penalties and use of the funds, respectively) shall apply with respect to fees collected under this subsection.

**(e) Exemptions for certain small areas**

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

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

**§ 7511e. Transitional areas**

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

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

**§ 7511f. NO<sub>x</sub> and VOC study**

The Administrator, in conjunction with the National Academy of Sciences, shall conduct a study on the role of ozone precursors in tropospheric ozone formation and control. The study shall examine the roles of NO<sub>x</sub> and VOC emission reductions, the extent to which NO<sub>x</sub> reductions may contribute (or be counterproductive) to achievement of attainment in different nonattainment areas, the sensitivity of ozone to the control of NO<sub>x</sub>, the availability and extent of controls for NO<sub>x</sub>, the role of biogenic VOC emissions, and the basic information required for air quality models. The study shall be completed and a proposed report made public for 30 days comment within 1 year of November 15, 1990, and a final report shall be submitted to Congress