

under a delegation of authority pursuant to Federal law; and (III) if implemented, would not be contrary to State law; and

(iii) which either the Secretary determines are contained in the standby Federal conservation plan established under section 8513 of this title or are approved by the Secretary, in his discretion.

(2) In the preparation of such plan (and any amendment to the plan) the Governor shall, to the maximum extent practicable, provide for consultation with representatives of affected businesses and local governments and provide an opportunity for public comment.

(3) Any State plan submitted to the Secretary under this section may permit persons affected by any measure in such plan to use alternative means of conserving at least as much energy as would be conserved by such measure. Such plan shall provide an effective procedure, as determined by the Secretary, for the approval and enforcement of such alternative means by such State or by any political subdivision of such State.

(c) Approval of State plans

(1) As soon as practicable after the date of the receipt of any State plan, but in no event later than 30 days after such date, the Secretary shall review such plan and shall approve it unless the Secretary finds—

(A) that, taken as a whole, the plan is not likely to achieve the emergency conservation target established for that State under section 8511(a) of this title for each energy source involved,

(B) that, taken as a whole, the plan is likely to impose an unreasonably disproportionate share of the burden of restrictions of energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof,

(C) that the requirements of this subchapter regarding the plan have not been met, or

(D) that a measure described in subsection (b)(1) is—

(i) inconsistent with any otherwise applicable Federal law (including any rule or regulation under such law),

(ii) an undue burden on interstate commerce, or

(iii) a tax, tariff, or user fee not authorized by State law.

(2) Any measure contained in a State plan shall become effective in that State on the date the Secretary approves the plan under this subsection or such later date as may be prescribed in, or pursuant to, the plan.

(d) State administration and enforcement

(1) The authority to administer and enforce any measure described in subsection (b)(1)(B) which is in a State plan approved under this section is hereby delegated to the Governor of the State and the other State and local officers and employees designated by the Governor. Such authority includes the authority to institute actions on behalf of the United States for the imposition and collection of civil penalties under subsection (e).

(2) All delegation of authority under paragraph (1) with respect to any State shall be con-

sidered revoked effective upon a determination by the President that such delegation should be revoked, but only to the extent of that determination.

(3) If at any time the conditions of subsection (b)(1)(B)(ii) are no longer satisfied in any State with respect to any measure for which a delegation has been made under paragraph (1), the attorney general of that State shall transmit a written statement to that effect to the Governor of that State and to the President. Such delegation shall be considered revoked effective upon receipt by the President of such written statement and a determination by the President that such conditions are no longer satisfied, but only to the extent of that determination and consistent with such attorney general's statement.

(4) Any revocation under paragraph (2) or (3) shall not affect any action or pending proceedings, administrative or civil, not finally determined on the date of such revocation, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such revocation.

(e) Civil penalty

(1) Whoever violates the requirements of any measure described in subsection (b)(1)(B) of this section which is in a State plan in effect under this section shall be subject to a civil penalty of not to exceed \$1,000 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided in paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of measures the authority for which is delegated under subsection (d).

(Pub. L. 96-102, title II, § 212, Nov. 5, 1979, 93 Stat. 759.)

§ 8513. Standby Federal conservation plan

(a) Establishment of standby conservation plan

(1) Within 90 days after November 5, 1979, the Secretary, in accordance with section 7191 of this title, shall establish a standby Federal emergency conservation plan. The Secretary may amend such plan at any time, and shall make such amendments public upon their adoption.

(2) The plan under this section shall be consistent with the attainment of the objectives of section 753(b)(1)¹ of title 15, and shall provide for the emergency reduction in the public and private use of each energy source for which an

¹ See References in Text note below.

emergency conservation target is in effect or may be in effect under section 8511 of this title.

(b) Implementation of standby conservation plan

(1) If the President finds—

(A) after a reasonable period of operation, but not less than 90 days, that a State emergency conservation plan approved and implemented under section 8512 of this title is not substantially meeting a conservation target established under section 8511(a) of this title for such State and it is likely that such target will continue to be unmet; and

(B) a shortage exists or is likely to exist in such State for the 60-day period beginning after such finding that is equal to or greater than 8 percent of the projected normal demand, as determined by the President, for an energy source for which such conservation target has been established under section 8511(a) of this title;

then the President shall, after consultation with the Governor of such State, make effective in such State all or any part of the standby Federal conservation plan established under subsection (a) for such period or periods as the President determines appropriate to achieve the target in that State.

(2) If the President finds after a reasonable period of time, that the conservation target established under section 8511(a) of this title is not being substantially met and it is likely that such target will continue to be unmet in a State which—

(A) has no emergency conservation plan approved under section 8512 of this title; or

(B) the President finds has substantially failed to carry out the assurances regarding implementation set forth in the plan approved under section 8512 of this title,

then the President shall, after consultation with the Governor of such State, make effective in such State all or any part of the standby Federal conservation plan established under subsection (a) for such period or periods as the President determines appropriate to achieve the target in that State.

(c) Basis for findings

Any finding under subsection (b) shall be accompanied by such information and analysis as is necessary to provide a basis therefor and shall be available to the Congress and the public.

(d) Submission of State emergency conservation plan

(1)² The Governor of a State in which all or any portion of the standby Federal conservation plan is or will be in effect may submit at any time a State emergency conservation plan, and if it is approved under section 8512(c) of this title, all or such portion of the standby Federal conservation plan shall cease to be effective in that State. Nothing in this paragraph shall affect any action or pending proceedings, administrative or civil, not finally determined on such date, nor any administrative or civil action or proceeding, whether or not pending, based upon

²So in original. No par. (2) has been enacted.

any act committed or liability incurred prior to such cessation of effectiveness.

(e) State substitute emergency conservation measures

(1) After the President makes all or any part of the standby Federal conservation plan effective in any State or political subdivision under subsection (b), the Secretary shall provide procedures whereby such State or any political subdivision thereof may submit to the Secretary for approval one or more measures under authority of State or local law to be implemented by such State or political subdivision and to be substituted for any Federal measure in the Federal plan. The measures may include provisions whereby persons affected by such Federal measure are permitted to use alternative means of conserving at least as much energy as would be conserved by such Federal measure. Such measures shall provide effective procedures, as determined by the Secretary, for the approval and enforcement of such alternative means by such State or by any political subdivision thereof.

(2) The Secretary may approve the measures under paragraph (1) if he finds—

(A) that such measures when in effect will conserve at least as much energy as would be conserved by such Federal measure which would have otherwise been in effect in such State or political subdivision;

(B) such measures otherwise meet the requirements of this paragraph; and

(C) such measures would be approved under section 8512(c)(1)(B), (C), and (D) of this title.

(3) If the Secretary approves measures under this subsection such Federal measure shall cease to be effective in that State or political subdivision. Nothing in this paragraph shall affect any action or pending proceedings, administrative or civil, not finally determined on the date the Federal measure ceases to be effective in that State or political subdivision, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such cessation of effectiveness.

(4) If the Secretary finds after a reasonable period of time that the requirements of this subsection are not being met under the measures in effect under this subsection he may reimpose the Federal measure referred to in paragraph (1).

(f) State authority to administer plan

At the request of the Governor of any State, the President may provide that the administration and enforcement of all or a portion of the standby Federal conservation plan made effective in that State under subsection (b) be in accordance with section 8512(d)(1), (2), and (4) of this title.

(g) Presidential authority not to be delegated

Notwithstanding any other provision of law (other than subsection (f)), the authority vested in the President under this section may not be delegated.

(h) Requirements of plan

The plan established under subsection (a) shall—

(1) taken as a whole, be designed so that the plan, if implemented, would be likely to

achieve the emergency conservation target under section 8511 of this title for which it would be implemented,

(2) taken as a whole, be designed so as not to impose an unreasonably disproportionate share of the burden of restrictions on energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof, and

(3) not contain any measure which the Secretary finds—

(A) is inconsistent with any otherwise applicable Federal law (including any rule or regulation under such law),

(B) is an undue burden on interstate commerce,

(C) is a tax, tariff, or user fee, or

(D) is a program for the assignment of rights for end-user purchases of gasoline or diesel fuel, as described in section 6263(a)(1)(A) and (B)³ of this title.

(i) Plan may not authorize weekend closings of retail gasoline stations

(1) Except as provided in paragraph (2), the plan established under subsection (a) may not provide for the restriction of hours of sale of motor fuel at retail at any time between Friday noon and Sunday midnight.

(2) Paragraph (1) shall not preclude the restriction on such hours of sale if that restriction occurs in connection with a program for restricting hours of sale of motor fuel each day of the week on a rotating basis.

(j) Civil penalties

(1) Whoever violates the requirements of such a plan implemented under subsection (b) shall be subject to a civil penalty not to exceed \$1,000 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided under paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of that portion of the standby Federal conservation plan for which authority is delegated to that State under subsection (f).

(Pub. L. 96-102, title II, §213, Nov. 5, 1979, 93 Stat. 762.)

REFERENCES IN TEXT

Section 753 of title 15, referred to in subsec. (a)(2), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

Section 6263 of this title, referred to in subsec. (h)(3)(D), was repealed by Pub. L. 106-469, title I, §104(1), Nov. 9, 2000, 114 Stat. 2033.

³ See References in Text note below.

§ 8514. Judicial review

(a) State actions

(1) Any State may institute an action in the appropriate district court of the United States, including actions for declaratory judgment, for judicial review of—

(A) any target established by the President under section 8511(a) of this title;

(B) any finding by the President under section 8513(b)(1)(A) of this title, relating to the achievement of the emergency energy conservation target of such State, or 8513(b)(2) of this title, relating to the achievement of the emergency energy conservation target of such State or the failure to carry out the assurances regarding implementation contained in an approved plan of such State; or

(C) any determination by the Secretary disapproving a State plan under section 8512(c) of this title, including any determination by the Secretary under section 8512(c)(1)(B) of this title that the plan is likely to impose an unreasonably disproportionate share of the burden of restrictions of energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof.

Such action shall be barred unless it is instituted within 30 calendar days after the date of publication of the establishment of a target referred to in subparagraph (A), the finding by the President referred to in subparagraph (B), or the determination by the Secretary referred to in subparagraph (C), as the case may be.

(2) The district court shall determine the questions of law and upon such determination certify such questions immediately to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(3) Any decision by such court of appeals on a matter certified under paragraph (2) shall be reviewable by the Supreme Court upon attainment of a writ of certiorari. Any petition for such a writ shall be filed no later than 20 days after the decision of the court of appeals.

(b) Repealed. Pub. L. 98-620, title IV, § 402(42), Nov. 8, 1984, 98 Stat. 3360

(c) Injunctive relief

With respect to judicial review under subsection (a)(1)(A), the court shall not have jurisdiction to grant any injunctive relief except in conjunction with a final judgment entered in the case.

(Pub. L. 96-102, title II, §214, Nov. 5, 1979, 93 Stat. 764; Pub. L. 98-620, title IV, §402(42), Nov. 8, 1984, 98 Stat. 3360.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-620 struck out subsec. (b) which required the court of appeals to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under subsec. (a)(2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.