



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2019-0668; FRL-10019-17-OAR]

Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has posted on its web site a final guidance document titled, “Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions.”

FOR FURTHER INFORMATION CONTACT: For general questions concerning this final guidance document, please contact Gobeail McKinley, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539-04, Research Triangle Park, NC 27711, telephone (919) 541-5246, email at mckinley.gobeail@epa.gov. For questions about the technical issues discussed in Section 6 of this guidance, please contact Barron Henderson, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Research Triangle Park, NC 27711, telephone (919) 541-2760, email at henderson.barron@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

How can I get copies of this guidance document and other related information?

DOCKET: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2019-0668. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information may not be publicly available, e.g., 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. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

AGENCY WEB SITE:

The EPA has established the EPA Guidance Portal web site for posting of all active final guidance documents. The EPA Guidance Portal can be accessed at the following web site:

<https://epa.gov/guidance/>.

The EPA has a web site to house information related to the international transport of air pollution at: <https://www.epa.gov/ground-level-ozone-pollution/international-transport-air-pollution>. The web site includes the EPA's draft and final Clean Air Act (CAA) section 179B guidance documents, a recording of and the slides presented during the public webinar held on February 12, 2020, and other technical information and resources related to the international transport of air pollution. The web site provides related information that the public may find useful.

What's the purpose of the EPA's guidance?

The purpose of this new final guidance document is to assist state, local, and tribal air agencies that are considering the development of a demonstration, under section 179B of the CAA, that a nonattainment area would be able to attain, or would have attained, the relevant National Ambient Air Quality Standard (NAAQS) but for air pollutant emissions emanating from outside the United States. The guidance describes and provides examples of the kinds of information and analyses that the U.S. Environmental Protection Agency (EPA) recommends air agencies consider including in a CAA section 179B demonstration. The guidance also describes a weight of evidence approach that the EPA intends to use when evaluating CAA section 179B demonstrations. This non-binding guidance is intended to assist air agencies considering the preparation of a CAA section 179B demonstration but does not limit the types of information or analyses that could be provided as part of any such demonstration under the CAA.

The EPA has the authority under CAA section 179B to assess such an international transport demonstration when evaluating a state implementation plan (SIP) submitted in response to a nonattainment designation or reclassification of an area, or when the EPA determines whether a nonattainment area has or has not failed to attain the standard by the attainment date (and thus would become subject to additional CAA requirements). If the EPA determines that such a demonstration is approvable, the EPA will provide certain regulatory relief as described in CAA section 179B. If the EPA approves a CAA section 179B demonstration showing that an area in the future would attain the relevant NAAQS but for international emissions, then the air agency would not be subject to the SIP requirement to provide an attainment demonstration. If the EPA approves a CAA section 179B demonstration showing that a nonattainment area would have attained the relevant NAAQS based on past air quality data but for international emissions, then the nonattainment area would not be subject to reclassification to a higher classification and would not be subject to additional regulatory requirements that come with a higher classification.

In addition to describing the kinds of information and analyses that may be helpful to include in a CAA section 179B demonstration, this guidance provides:

- A review of the existing regulatory framework for considering CAA section 179B demonstrations;
- A review of other existing regulatory mechanisms that may be more appropriate alternatives to CAA section 179B in certain situations;
- Recommended timeframes for the CAA section 179B demonstration development and submittal process; and
- Background on the nature of intracontinental and intercontinental transport of air pollution.

The EPA accepted comments on the draft guidance from January 9, 2020, through March 10, 2020. The EPA received comments from 15 entities. All comments received by the EPA are

included in the docket for this guidance. The EPA thoroughly considered the points raised in the comments in the development of this final guidance.

1. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant guidance document that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

2. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not considered an Executive Order 13771 deregulatory or regulatory action. This action is considered a significant guidance action. There are no quantified cost estimates for this guidance because it does not create regulatory requirements for states. To the extent the clarifications in the guidance influence the behaviors of states, this guidance could help a state develop an approvable CAA section 179B demonstration, which in turn would be expected to reduce the state's burden associated with implementing nonattainment area requirements.

3. Executive Order 13609: Promoting International Regulatory Cooperation

This guidance does not impact regulatory cooperation because it is not a regulation.

4. Executive Order 13777: Enforcing the Regulatory Reform Agenda

This guidance is not being issued as a result of the agency's regulatory reform agenda or through a recommendation from the Agency's Regulatory Reform Task Force because it is not a regulation.

5. Executive Order 13891: Promoting the Rule of Law Through Improved Agency Guidance Documents

This guidance complies with all the requirements of Executive Order 13891.

Dated: December 18, 2020.

Panagiotis Tsirigotis,

Director,

Office of Air Quality Planning and Standards.

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