

Original signed on April 27, 1995

MEMORANDUM

SUBJECT: Ozone Nonattainment Planning: Decentralization of Rule Effectiveness Policy

FROM: Sally L. Shaver, Director  
Air Quality Strategies & Standards Division (MD-15)

TO: Director, Air, Pesticides and Toxics Management  
Division, Regions I and IV  
Director, Air and Waste Management Division,  
Region II  
Director, Air, Radiation and Toxics Division,  
Region III  
Director, Air and Radiation Division,  
Region V  
Director, Air, Pesticides and Toxics Division,  
Region VI  
Director, Air and Toxics Division,  
Regions VII, VIII, IX, and X

At the January meeting of State Environmental Commissioners, National Governor's Association members and STAPPA\ALAPCO, the States asked that EPA's 80 percent rule effectiveness policy, used to develop title I ozone nonattainment plans, be reevaluated or replaced with more flexible criteria for SIP demonstrations. In our response, EPA pledged to work with States to provide opportunities for more flexibility. This guidance memo is intended to provide that flexibility by encouraging States and EPA Regions to work together to determine the most appropriate rule effectiveness values for specific ozone nonattainment areas. Accordingly, this memo initiates a decentralization process for rule effectiveness actions by delegation of all overview and approval activity to the EPA Regional Offices. It is no longer necessary for OAQPS to overview or concur on rule effectiveness studies and determinations. While the general principles embodied in past Agency guidance documents are still operable, EPA Regions are encouraged to work with individual States as they make technically sound modifications to the rule effectiveness used in State emissions inventory calculations.

Background

The EPA currently allows States to develop alternate rule effectiveness methods as long as they follow certain basic requirements as described in the 1992 and 1994 guidelines for

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rule effectiveness.<sup>1</sup> These previous guidance documents identify three options that the States might consider as alternatives to EPA's recommended 80 percent default value for rule effectiveness. One of these options allows States to develop their own alternative method for estimating rule effectiveness. The information that States should consider in alternative rule effectiveness methods is outlined in the November 1992 guidance document referred to in footnote #1.

As you are aware, limited experience during the late 1980's indicated many VOC regulatory programs to be less than fully effective in achieving the planned emissions reduction credits. Current automobile inspection/maintenance credits contained in EPA's mobile model recognize this fact. Thus, EPA developed rule effectiveness guidance to account for emission underestimates due to such factors as noncompliance with existing rules, control equipment downtime, operating and maintenance problems, process upsets, and regulatory flaws. For many applications, a rule effectiveness assessment includes the adjustment of emissions for sources or source-categories to correct for these failures and uncertainties. As such, EPA continues to believe that a rule effectiveness adjustment provides a more reliable estimate for SIP control, planning, and modeling activities.

Rule effectiveness can be affected by several factors. Among these are the nature of the regulation, the nature of techniques used to comply with the regulation, the performance of each source in complying with the regulation, and the performance of the implementing agency in enforcing the regulation. For example, enhanced monitoring could increase the performance of the implementing agency in enforcing the regulation and cause adjustment to the 80 percent rule effectiveness default value.

### Conclusion

A number of questions have been raised regarding the determination of rule effectiveness. Since EPA's goal is to

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<sup>1</sup>Guidelines for Estimating and Applying Rule Effectiveness for Ozone/CO State Implementation Plan Base Year Inventories, EPA-452/R-92-010, 11/92; and Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications, EPA 452/R-94-001, 1/94.

provide flexibility for States and EPA Regions to make area-specific rule effectiveness decisions, we suggest that each Regional Office take the initiative in addressing rule effectiveness issues with its States. As stated in the memorandum from John S. Seitz, dated May 26, 1993, to the

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Regional Air Division Directors, subject: Calculation of Rule Effectiveness for Emissions Inventories, the EPA will allow States to use factors other than 80 percent, justified by State-specific studies and approved by the appropriate EPA Regional Office. Approval by EPA Headquarters will no longer be necessary.

The contact persons for this guidance are Tom Helms at 919-541-5527 or Ted Creekmore at 919-541-5699. If you have any questions please contact me at 919-541-5505.

cc: John Seitz  
Lydia Wegman  
Bill Harnett  
Tom Helms