

**TITLE 42 - THE PUBLIC HEALTH AND WELFARE**  
**CHAPTER 85 - AIR POLLUTION PREVENTION AND CONTROL**  
**SUBCHAPTER I - PROGRAMS AND ACTIVITIES**  
**Part D - Plan Requirements for Nonattainment Areas**  
**subpart 2 - additional provisions for ozone nonattainment areas**

**§ 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 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) of this section, pay a fee to the State as a penalty for such failure, computed in accordance with subsection (b) of this section, 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) of this section 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) of this section. If the Administrator makes

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*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

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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.)