

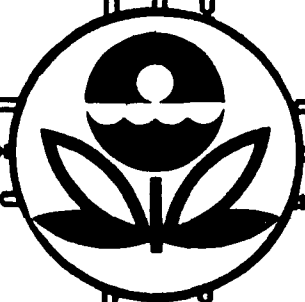
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CLEAN AIR ACT
SECTION 174 GUIDELINES



U.S. ENVIRONMENTAL PROTECTION AGENCY

Office of Air Quality Planning and Standards

Research Triangle Park, North Carolina

CLEAN AIR ACT
SECTION 174 GUIDELINES

Guidance on designation of
lead planning organizations
for nonattainment areas and
on determination of inter-
agency responsibilities

December 1977

Issued Jointly by
The U.S. Environmental Protection Agency
and
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Appendix A. List of Key Dates

Appendix B. Section 174

General questions on any of the material covered by this guideline should be sent to the Office of Transportation and Land Use Policy (AW-445), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Ms. Martha Burke. Ms. Burke's telephone number is (202) 755-0570. Questions concerning specific state or local areas should be directed to the appropriate EPA regional office.

1. INTRODUCTION

1.1 Applicability

These guidelines are applicable to all metropolitan area regions or portions of regions where the national ambient air quality standards for photochemical oxidants or carbon monoxide will not be attained by July 1, 1979.

1.2 Purposes

The purposes of these guidelines include:

1. To recommend procedures and criteria for determining a lead agency to be responsible for coordinating the preparation of the implementation plan revisions called for by the 1977 amendments to the Clean Air Act (P.L. 95-95) in metropolitan area regions where carbon monoxide or photochemical oxidant standards will not be attained by July 1979.
2. To assist state and local governments in identifying the initial planning, implementation, and enforcement responsibilities for the plan revisions and in establishing a process for further definition of responsibilities as development of the revisions progresses.
3. To encourage further coordination and consolidation of federally sponsored planning programs. This includes the integration of the new transportation related air quality requirements under P.L. 95-95 into the transportation planning process required by federal transportation grant statutes.

1.3 Background

On August 7, 1977, President Carter signed into law the first comprehensive amendments to the Clean Air Act since 1970. Among the more important changes in the Clean Air Act are provisions encouraging local governments and organizations of local elected officials to assume additional responsibilities in the development, implementation, and enforcement of plans to attain national ambient air quality standards. Such plans were first required under the 1970 amendments to the Clean Air Act. The 1977 amendments require plan revisions for areas where standards have not been attained.

The assumption of additional responsibilities by local governments and local officials is specifically encouraged in those areas where photochemical oxidant and carbon monoxide standards will not be attained by July 1, 1979 (section 174(a)). The first identification of nonattainment areas for these and other pollutants under the requirements of the 1977 amendments must have been made by states by December 5, 1977. The Administrator of the Environmental Protection

Agency (EPA) must publish a list of these areas, with any modifications he deems necessary, by February 3, 1978.

For areas where standards for photochemical oxidants and carbon monoxide will not be attained by July 1, 1979, state and local elected officials must jointly determine by February 7, 1978, their respective responsibilities for the plan revisions necessary to attain standards by the new deadlines in the 1977 amendments. The plan elements for which responsibilities are to be jointly determined encompass control measures for all pollutants for which standards have not been attained, not just photochemical oxidants and carbon monoxide.

The amendments require that, where possible, the implementation plan revisions be prepared by an organization of local elected officials designated by agreement of local governments. The amendments strongly encourage preparation by the organization now responsible for transportation planning under section 134 of title 23, U.S.C., or for air quality maintenance planning (or for both). The designated organization and its responsibilities must be certified by the state (or states if an interstate area is involved). Where local governments have not reached agreement by February 7, 1978, the governor must, in consultation with the elected officials of local governments in the affected area, designate an organization of local elected officials or a state agency to prepare the plan revisions. The designation by the governor must be in accordance with the joint determination of responsibilities made by state and local elected officials.

The governor must, under regulations which the EPA will propose during December 1977, submit a notice to the EPA certifying the designated agency for each nonattainment area or identifying the organization that he or she has designated. The notice must include a brief summary of the process involved in selecting the designated agency. A more detailed documentation of the selection process shall be included as part of the plan revisions to be submitted to the EPA by January 1, 1979. Evidence of the involvement of state legislatures and local governments is required as part of the plan revision submittal (section 172(b)(9)).

Only organizations of local elected officials of general purpose governments certified by the governor will be eligible for the grants authorized under section 175 of the amendments. In each urban area which is wholly or partially classified as a nonattainment area, only one organization will be eligible to receive a grant. The organization receiving the grant may use the grant funds to support plan revision activities carried out by ~~other~~ governmental organizations, public interest groups, or private consultants.

In addition to further defining the process for implementation of the Clean Air Act amendments, the EPA and the Department of Transportation also encourage in these guidelines further coordination and consolidation of federally sponsored planning programs. Such encourage-

ment is consistent with President Carter's Environmental Message of May 1977 and with subsequent actions taken by the President to eliminate, consolidate, or simplify federal planning requirements. The Environmental Message in part stressed the need for improved implementation of environmental laws through more efficient delivery of federally funded programs. The encouragement for coordination and consolidation does not imply the advocacy of any particular institutional mechanism. A wide variety of mechanisms ranging from concentration of authority or responsibility in a single organization to development of memoranda of understanding among several organizations are available to achieve the same objectives.

2. SELECTION OF A LEAD PLANNING ORGANIZATION

2.1 Criteria for Selecting an Organization

These guidelines are intended to assist state and local officials in reaching agreement on the lead planning organization to be responsible for plan revisions called for by the 1977 Clean Air Act amendments. The role of the lead planning organization may vary from developing almost all elements of the plan revision to acting as a forum for decisionmaking by elected officials on elements developed almost entirely by other organizations. In most instances the lead organization will probably develop some elements, coordinate the development of other elements, and serve as a forum for deciding the ultimate nature of the plan revisions.

The amendments require that, where feasible, the organization designated and certified to prepare the plan revisions shall be (1) the metropolitan planning organization (MPO) responsible for the continuing, cooperative, and comprehensive transportation planning process for the affected area; (2) the organization responsible for the air quality maintenance planning process; or (3) an organization responsible for both planning processes. Coordination of the development of a plan revision with the MPO transportation planning process is particularly important in those nonattainment areas where transportation control measures appear necessary to attain standards. Only through the MPO process can the federal funds available under Federal Highway Administration and Urban Mass Transportation Administration programs be used to implement necessary transportation management measures and capital projects.

The Administrator of the EPA also strongly encourages that, in addition to meeting the requirements described above, the designations made pursuant to section 174 contribute to a consolidation within a single organization of responsibilities for air quality planning and for other environmental planning carried out under federal laws administered by the EPA. These laws include the Federal Water Pollution Control Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act. The EPA believes that, where properly applied, consolidation of environmental planning efforts is an essential step in the development of comprehensive environmental strategies that are able to take into account the interrelated nature of environmental problems. Comprehensive strategies can also result in a more efficient and effective use of resources in achieving environmental benefits.

The following criteria should be considered by local elected officials and by the governor when determining the lead planning organization for urban nonattainment regions:

1. The organization should be the forum for cooperative decisionmaking by principal elected officials of general purpose

local governments. The principle elected officials of general purpose local governments should have adequate (preferably majority or larger) representation in the organization but membership need not be limited to them or their designees. There should be participation by agencies that may be responsible for implementation of portions of the plan.

2. The organization should have a planning jurisdiction that include the current urbanized area and the area likely to be urbanized at least over the period to be covered by the revised plan.
3. The organization should have the ability to produce the necessary plan revision for the planning jurisdiction described above by the January 1, 1979, submittal deadline. The organization should have the capability to perform the necessary analysis and planning tasks itself or be able to enter into binding agreements with other organizations to perform such tasks.
4. The organization should have the capability to coordinate the development of the plan revision with other relevant planning processes, if it does not have responsibility for those processes, and with agencies that may have responsibility for implementation or enforcement. Relevant planning processes include the continuing, cooperative, and comprehensive planning process; other environmental planning processes assisted through EPA-administered programs; and comprehensive planning processes established in accordance with Part IV of the Office of Management and Budget Circular A-95 (41 FR 2052).

2.2 The Selection Process

Local governments within a nonattainment area for photochemical oxidants or carbon monoxide may, by agreement, designate an organization of elected officials of local government to prepare the plan revision for the pollutants for which standards in that area have not been attained. A resolution by the governing body of an organization meeting the criteria in section 2.1 of these guidelines is sufficient to demonstrate agreement of local governments. Such a designation must be submitted to the governor by February 7, 1978. Local governments intending to designate an organization should consult with the state during the designation process.

If local governments agree on an organization by February 7, 1978, the governor shall certify that organization by April 1, 1978, unless he or she finds that the designated organization does not meet the criteria in section 2.1. If local governments have initiated, but have not completed, designation of an organization by February 7, 1978, they should inform the governor that an on-going process exists.

If local governments are unable to agree by February 7 on a single lead organization of local elected officials to be responsible for the

coordination of the plan revision, the governor shall, in consultation with local elected officials of general purpose local governments, designate an organization or a state agency by April 1, 1978. If more than one organization meeting the criteria in section 2.1 is self-designated in an area and proposed to the governor for certification, the governor shall certify the organization which, in his or her opinion, is most capable of completing the required plan revisions.

The governor may designate a state, local, or regional agency, but that designation shall be in accordance with the joint determination of responsibilities required by section 174 of the Clean Air Act amendments and discussed in the following section of these guidelines. In making a designation, the governor shall take into consideration any on-going process of local designation in existence on February 7, 1978, even though no formal agreement among local governments has been reached.

The governor shall submit to the Administrator of the EPA by April 1, 1978, through the appropriate EPA regional office, a list of all organizations or agencies certified or designated within the state, a description of the geographic jurisdictions of these organizations and agencies, and a general description of their responsibilities. Regardless of the agency finally designated or certified, the decisions should reflect an examination of all reasonable alternatives for consolidation of environmental and other planning functions. The submission should include a brief discussion of the alternatives investigated and the basis for the ultimate choice. If the organization designated or certified by the governor is not one of the organizations encouraged by the amendments and by the Administrator in these guidelines, the reasons that such an organization should not have the lead responsibility for planning should be specifically addressed. More detailed descriptions, including documentation of the consultation that occurred, shall be submitted by January 1, 1979, with the implementation plan revision.

3. JOINT DETERMINATION OF RESPONSIBILITIES

3.1 Joint Determination Process

The determination of responsibilities made jointly by state and local elected officials will necessarily have to be relatively general for many areas. The nature and extent of the air quality problem may not be adequately defined by the February 7, 1978, deadline specified in the amendments. In addition, the planning process guidelines for photochemical oxidant and carbon monoxide nonattainment areas, required to be prepared by the EPA also by February 7, will not be available for consideration in the joint determinations. The nature of the process recommended in the EPA guidelines should influence the ultimate determination of responsibilities.

Because agency responsibilities, especially for plan implementation and enforcement, will undoubtedly change or become more specific by the time a plan revision is actually submitted to the EPA for approval, the determination of responsibilities should be viewed as a process, the first phase of which is to be completed by February 7, 1978. The final product of the joint determination process should be included as part of the plan revision submitted by January 1, 1979. Possible steps in this phased process are set forth below. Because institutional arrangements differ from region to region and from state to state, specification of a generally applicable process for joint state-local determination of agency responsibilities is not possible.

Many state and local governments already have initiated such a process. As long as the approach taken provides for substantial involvement of all parties - local governments, regional agencies, and states - and results in the identification of agencies and responsibilities as described in these guidelines, such an existing process is sufficient to meet the requirements of section 174(a). The activities described in the following section should be completed by February 7, 1978, to comply with the requirements of section 174.

3.2 Notification of Affected Governmental Organizations

The state should, by correspondence or other established notification procedures, ensure that all affected governmental organizations within the nonattainment region are informed of the purpose and schedule of the joint determination process. In many instances, an entire state may be designated as a nonattainment area for photochemical oxidants. However, many control strategies will still generally focus on urban regions. As a minimum, the following organizations should be notified in each region:

- a. General purpose local governments.

- b. Organizations of local elected officials (including all metropolitan planning organizations).
- c. Air pollution control agencies (including the agency or agencies responsible for air quality maintenance planning)
- d. Areawide A-95 clearinghouses.
- e. Areawide and statewide water quality planning agencies designated under section 208 of the Federal Water Pollution Control Act.
- f. Areawide solid waste management agencies.
- g. Areawide comprehensive planning agencies.
- h. Coastal management agencies.
- i. Interested citizen groups.

3.3 Establishment of a Determination Process.

The state should ensure the establishment of a process for determination of agency responsibilities that will provide state and local elected officials of all major political subdivisions within a region with an opportunity for substantial involvement and that will enable the concerns of these officials to be adequately addressed. This may be done through a variety of mechanisms including the establishment of task forces with state and local government representatives and the use of public meetings or hearings with elected officials of all major general purpose local governments within the affected regions invited. Where appropriate, existing forums such as meetings of organizations of local elected officials or meetings of air quality maintenance policy advisory groups should be used in the determination process.

All state and local officials participating in the determination of agency responsibilities should have the opportunity to propose agencies and their respective functions. All proposals should be made available to affected agencies and the general public for comment.

3.4 Formal Identification of Responsibilities.

The initial joint determination of responsibilities shall at a minimum establish which level of government (although not necessarily the specific agency) - the state, local governments, regional agencies or any combination of these - shall be responsible for: (1) the development of an accurate, comprehensive, and current emission inventory; (2) the completion of an air quality analysis, using modeling techniques, to

determine the level of control needed to attain standards; and (3) the evaluation and selection of control strategies for mobile sources, point sources, and area sources. An initial assignment of responsibilities for implementation and enforcement must be considered. However, it is expected that the final determination of such responsibilities will occur after the measures to be included in the plan revision have been relatively well defined.

When agreement is reached among the state and the participating local elected officials, memoranda of understanding or other comparable joint acknowledgements of responsibilities should be signed. Because duties and responsibilities for implementation and enforcement of plan revisions may change as development of the plan revisions proceeds, the determination of agency responsibilities need not be incorporated in the state implementation plan until the revisions are submitted for federal approval. The initial determination of responsibilities made by February 7, 1978, to meet the requirements of section 174, should be submitted by April 1, 1978, to the EPA with the certifications of lead planning organizations discussed in section 2 of these guidelines.

APPENDIX A
LIST OF KEY DATES

<u>Date</u>	<u>Action</u>
August 7, 1977	Clean Air Act amendments are signed into law.
December 5, 1977	States identify nonattainment areas.
February 3, 1978	EPA publishes list of nonattainment areas.
February 7, 1978	Local governments designate organizations of local officials. State and local elected officials complete joint determinations of responsibilities.
April 1, 1978	Governors transmit to EPA certification of lead planning organizations and joint determinations of responsibilities.
January 1, 1979	Governors transmit to EPA plan revision for nonattainment areas.

APPENDIX B
SECTION 174

PLANNING PROCEDURES

42 USC 7504

"Sec. 174. (a) Within six months after the enactment of the Clean Air Act Amendments of 1977, for each region in which the national primary ambient air quality standard for carbon monoxide or photochemical oxidants will not be attained by July 1, 1979, the State and elected officials of affected local governments shall jointly determine which elements of a revised implementation plan will be planned for and implemented or enforced by the State and which such elements will be planned for and implemented or enforced by local governments or regional agencies, or any combination of local governments, regional agencies, or the State. Where possible within the time required under this subsection, the implementation plan required by this part shall be prepared by an organization of elected officials of local governments designated by agreement of the local governments in an affected area, and certified by the State for this purpose. Where such an organization has not been designated by agreement within six months after the enactment of the Clean Air Act Amendments of 1977, the Governor (or, in the case of an interstate area, Governors), after consultation with elected officials of local governments, and in accordance with the determination under the first sentence of this subparagraph, shall designate an organization of elected officials of local governments in the affected area or a State agency to prepare such plan. Where feasible, such organization shall be the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, United States Code, or the organization responsible for the air quality maintenance planning process under regulations implementing this section, or the organization with both responsibilities.

Consultation.

"(b) The preparation of implementation plan provisions under this part shall be coordinated with the continuing, cooperative, and comprehensive transportation planning process required under section 134 of title 23, United States Code, and the air quality maintenance planning process required under section 110, and such planning processes shall take into account the requirements of this part.

42 USC, pp.
691-696.