

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal

agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 6, 2024.

Jeanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–20669 Filed 9–11–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2023–0466; FRL–12179–01–R4]

Air Plan Approval; Forsyth County, North Carolina; Removal of Excess Emissions Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the North Carolina Division of Air Quality (NCDAQ) on behalf of the Forsyth County Office of Environmental Assistance and Protection (FCEAP or Forsyth County) on November 28, 2022. The revision was submitted in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, concerning excess emissions during startup, shutdown, and malfunction (SSM) events, and is intended to correct deficiencies in the Forsyth County portion of the North Carolina SIP identified by EPA in the SIP call. EPA is proposing to approve the SIP revision in accordance with requirements for SIP provisions under the Clean Air Act (CAA or Act). In addition, EPA is proposing to approve minor and administrative changes to certain regulatory provisions that have been revised by the local agency since EPA's last approval of those provisions.

DATES: Comments must be received on or before October 3, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2023–0466 at [regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or

multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Faith Goddard, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8757. Ms. Goddard can also be reached via electronic mail at goddard.faith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. EPA's 2015 SSM SIP Action

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” hereinafter referred to as the “2015 SSM SIP Action.” See 80 FR 33840 (June 12, 2015). The 2015 SSM SIP Action clarified, restated, and updated EPA’s interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 States, applicable in 45 statewide and local jurisdictions, including Forsyth County, North Carolina, were substantially inadequate to meet CAA requirements and issued a SIP call to those States to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected States had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

In the 2015 SSM SIP Action, EPA determined that Forsyth County Air Quality Control Ordinance and Technical Code Subchapter 3D, Section .0500, Rule 3D .0535, *Excess Emissions Reporting and Malfunctions*, paragraphs (c) and (g) (also referred to herein as “Rule 3D .0535(c) and (g)”), are substantially inadequate to meet CAA requirements on the basis that they contain impermissible director’s discretion provisions. See 80 FR 33840, 33964 (June 12, 2015). In the Forsyth County portion of the North Carolina SIP, Rule 3D .0535(c) and (g) provide

exemptions for emissions exceeding otherwise applicable SIP emission limitations at the discretion of a local official during malfunctions at paragraph (c) and startup and shutdown at paragraph (g). The rationale underlying EPA’s determination that these Forsyth County provisions are substantially inadequate to meet CAA requirements is detailed in the 2015 SSM SIP Action and the accompanying proposals.

B. 2022 Findings of Failure To Submit

On January 12, 2022, pursuant to CAA section 110(k)(1), EPA finalized “Findings of Failure To Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction,” hereinafter referred to as the “2022 Findings of Failure to Submit.” See 87 FR 1680 (January 12, 2022). The 2022 Findings of Failure to Submit found that twelve State and local agencies, including FCEAP, failed to submit timely corrective SIP revisions required by the 2015 SSM SIP Action. This action triggered certain CAA deadlines for EPA to impose sanctions if an affected agency did not submit a complete SIP revision addressing the outstanding deficiencies and to promulgate a Federal Implementation Plan (FIP) if EPA did not approve a required SIP submittal by February 11, 2024.

On November 28, 2022, in response to the 2015 SSM SIP Action and the 2022 Findings of Failure to Submit, NCDAQ submitted on behalf of FCEAP a revision to the Forsyth County portion of the North Carolina SIP. In its submittal, Forsyth County requests that EPA revise the Forsyth County portion of the North Carolina SIP by removing the substantive text of Rule 3D .0535(c) and (g) and adding language clarifying that paragraphs (c) and (g) are not included in EPA’s SIP-approved version of Rule 3D .0535 in the Forsyth County portion of the North Carolina SIP. Forsyth County also includes in the submittal minor and non-substantive administrative amendments to the remaining Rule 3D .0535 regulatory provisions, as revised since EPA’s last approval on February 17, 2000.¹

C. Environ. Comm. Fl. Elec. Power v. EPA, 94 F.4th 77 (D.C. Cir. 2024)

On March 1, 2024, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued a decision

in *Environmental Committee of the Florida Electric Power Coordinating Group, Inc., v. EPA*, 94 F.4th 77 (D.C. Cir. 2024). The case was a consolidated set of petitions for review of the 2015 SSM SIP Action. The court granted the petitions in part, vacating the SIP call with respect to SIP provisions that EPA identified as automatic exemptions, director’s discretion provisions, and affirmative defenses that are functionally exemptions; and denied the petitions as to other provisions that EPA identified as overbroad enforcement discretion provisions or affirmative defense provisions that would preclude or limit a court from imposing relief in the case of violations. Although the court vacated the SIP call as to director’s discretion provisions such as Rule 3D .0535(c) and (g), EPA is required, pursuant to CAA section 110(k)(3), to approve Forsyth County’s submittal requesting removal of the substantive text of these provisions from the Forsyth County portion of the North Carolina SIP because the submittal meets all of the applicable CAA requirements. See 42 U.S.C. 7410(k)(3). The D.C. Circuit’s decision in *Environmental Committee* does not preclude State and/or local air jurisdictions from submitting SIP revisions requesting removal of certain provisions from their SIP where that removal makes the SIP more protective of air quality, as FCEAP did here.

II. Analysis of the November 28, 2022, Submittal

Forsyth County requests that EPA remove the substantive text of Rule 3D .0535(c) and (g) from the Forsyth County portion of the North Carolina SIP and add language clarifying that Rule 3D .0535(c) and (g) are not included in the Forsyth County portion of the North Carolina SIP. Removing the substantive text of Rule 3D .0535(c) and (g) from the SIP would mean that emission limits incorporated into the Forsyth County portion of the North Carolina SIP would apply at all times, including periods of SSM. If removed from the Forsyth County portion of the North Carolina SIP, the substantive text of Rule 3D .0535(c) and (g) will apply to Forsyth County in its exercise of enforcement authority for local-law purposes only. These provisions would remain enforceable as local-only provisions, and language would be added to clarify that Rule 3D .0535(c) and (g) are not included in the Forsyth County portion of the North Carolina SIP. Because the substantive text of Rule 3D .0535(c) and (g) would not be part of the Forsyth County portion of the North Carolina SIP, citizens and EPA could seek injunctive relief or civil penalties for

¹ See 65 FR 8053.

excess emissions. Based on Forsyth County's request to revise Rule 3D .0535(c) and (g) in the Forsyth County portion of the North Carolina SIP, EPA proposes to approve Forsyth County's November 28, 2022, SIP revision because the requested revision is consistent with CAA requirements.

Minor and non-substantive administrative amendments to Rule 3D .0535 have been adopted by Forsyth County since EPA's last approval on February 17, 2000,² resulting in an inconsistency between the federally approved SIP and local rules (*i.e.*, a "SIP gap"). Forsyth County's November 28, 2022, SIP revision includes minor changes to Rule 3D .0535(e) and (f) that revise malfunction abatement plan deadlines (at Rule 3D .0535(e)) and notification and source testing requirements (at Rule 3D .0535(f)), as well as non-substantive administrative changes to the remaining Rule 3D .0535 regulatory provisions that update the formatting of rule references and make minor edits that are generally clarifying in nature.³ Regarding the non-substantive SIP revisions, EPA proposes to approve these administrative changes because the November 28, 2022, SIP revision is consistent with CAA requirements and does not alter the meaning of the regulations.

Regarding Rule 3D .0535(e), Forsyth County revises malfunction abatement plan requirements by removing an obsolete sentence that reads, "The owner or operator of any electric utility boiler unit required to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within 60 days of the effective date of this Rule." The existing subsequent sentence requires "any other source" required to have a malfunction abatement plan to submit that plan within six months of the Director's requirement to do so. Forsyth County revises Rule 3D .0535(e) such that it now States that "any source" required to have a malfunction abatement plan must submit that plan within six months of the Director's requirement to do so. Because Rule 3D .0535(d) still requires submission of malfunction abatement plans within 60 days for sources other than electric utility boilers, only the submission timeframe

for electric utility boilers has increased, and EPA anticipates no associated impact on air quality.

Forsyth County also revises the timeframe within which amendments can be submitted to remedy malfunction abatement plan deficiencies. The revised provision states that, if a malfunction abatement plan does not carry out objectives described in Rule 3D .0535(d) and is therefore disapproved, an amendment that corrects the deficiencies identified must be submitted "within 30 days of receipt of the Director's notification of disapproval," whereas the existing provision requires a satisfactory amendment to be submitted "within a time prescribed by the Director." EPA proposes to approve Forsyth County's changes to Rule 3D .0535(e) concerning malfunction abatement plan requirements because the November 28, 2022, SIP revision is consistent with CAA requirements and removes a sentence requiring the submission of an electric utility boiler unit malfunction abatement plan by an expired deadline and replaces an undefined timeframe for correcting the malfunction abatement plan to be prescribed by a local official with a definite timeframe of thirty days. Regarding the revised timeframe within which amendments can be submitted to remedy malfunction abatement plan deficiencies, EPA finds the revised provision to be more stringent.

Regarding Rule 3D .0535(f), Forsyth County updates a corrective measures notification requirement. The revised provision states that, "after" measures correcting excess emissions lasting more than four hours resulting from "a malfunction, a breakdown of process or control equipment or any other abnormal conditions" have been accomplished, the source owner or operator must notify a local official, whereas the existing provision requires the owner or operator to notify a local official "immediately when . . . corrective measures have been accomplished." Rule 3D .0535(f)'s initial notification requirements at (f)(1) remain unchanged, as do its ultimate reporting requirements at (f)(3).⁴ EPA proposes to approve Forsyth County's change to Rule 3D .0535(f) concerning corrective measures notification requirements because EPA anticipates no associated impact on air quality and the revision is consistent with CAA requirements; the precise timing of the notification of the accomplishment of a

particular corrective measure to a local official need not be exactly simultaneous with the accomplishment of such measure. EPA is not proposing at this time to act on a revised cross-reference to source testing requirements in the last sentence of Rule 3D .0535(f). The cross-referenced section, as revised, is not approved into the Forsyth County portion of the North Carolina SIP.

III. Proposed Action

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). EPA is proposing to approve Forsyth County's November 28, 2022, SIP submission requesting changes to Forsyth County Air Quality Control Ordinance and Technical Code Subchapter 3D, Section .0500, Rule 3D .0535, *Excess Emissions Reporting and Malfunctions*, except for the change to the cross-referenced rule in Rule 3D .0535(f), into the Forsyth County portion of the North Carolina SIP. Specifically, EPA is proposing to remove the substantive text of Rule 3D .0535(c) and (g) from the Forsyth County portion of the North Carolina SIP, to add statements clarifying that Rule 3D .0535(c) and (g) are not included in the Forsyth County portion of the North Carolina SIP, and to otherwise approve the revised version of Rule 3D .0535 into the Forsyth County portion of the North Carolina SIP, except for the revised cross-reference in the last sentence of Rule 3D .0535(f), which EPA is not proposing to act on at this time. EPA is proposing approval of the SIP revision because the Agency has determined that it is consistent with the requirements for SIP provisions under the CAA. EPA is not reopening the 2015 SSM SIP Action nor the 2022 Findings of Failure to Submit and is taking comment only on whether the SIP revision is consistent with CAA requirements.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in sections I through III of this preamble, EPA is proposing to incorporate by reference Forsyth County Air Quality Control Ordinance and Technical Code Subchapter 3D, Section .0500, Rule 3D .0535, *Excess Emissions Reporting and Malfunctions*, locally effective July 14, 2022, with the following exceptions: EPA is not proposing to incorporate the last

² See 65 FR 8053.

³ The November 28, 2022, SIP revision includes the following typographical error: in Rule 3D .0535(b), as shown on page 10 of 75 in the SIP submittal, a cross-reference to "Subchapter 3Q .0700" is revised to "Section 3D-0700." The amendments to the state-effective version of Rule 3D .0535(b), which start at page 6 of 75 in the SIP submittal, show the revised cross-reference correctly as "Section 3Q-0700" at page 7 of 75 in the SIP submittal.

⁴ Rule 3D .0535(f)(1) contains initial excess emissions occurrence notification requirements, and Rule 3D .0535(f)(3) contains written reporting requirements for documenting excess emissions as described in prefatory text at paragraph (f).

sentence of Rule 3D .0535(f),⁵ and in Rule 3D .0535(c) and (g), is proposing to incorporate only the statements that each paragraph “is not included in Forsyth County’s portion of the State Implementation Plan.”⁶ EPA has made and will continue to make these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Thus, in reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

⁵ The July 14, 2022, local effective version of the last sentence of Rule 3D .0535(f) contains a change that incorporates a reference to regulations not approved into the SIP. If EPA takes final action to approve the November 28, 2022, SIP revision, the Agency will update the SIP table at 40 CFR 52.1770(c) to reflect the retention of the September 14, 1998, version of the aforementioned sentence.

⁶ If EPA takes final action to approve the November 28, 2022, SIP revision, the SIP-approved version of Rule 3D .0535(c) will read, “(Paragraph (c) is not included in Forsyth County’s portion of the State Implementation Plan.)” and the SIP-approved version of .0535(g) will read, “(Paragraph (g) is not included in Forsyth County’s portion of the State Implementation Plan.)” The Agency would update the SIP table at 40 CFR 52.1770(c) to reflect this fact.

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The FCEAP did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the proposed action being taken here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental

justice for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 6, 2024.

Jeananne Gettle,

Acting Regional Administrator, Region 4.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 121

RIN 0937–AA13

Organ Procurement and Transplantation: Implementation of the HIV Organ Policy Equity (HOPE) Act

AGENCY: Office of the Assistant Secretary for Health (OASH) and Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS) proposes to amend the regulations implementing the National Organ Transplant Act of 1984, as amended (NOTA), to remove clinical research and institutional review board (IRB) requirements (“research and IRB requirements”) for transplantation of kidney and livers from donors with human immunodeficiency virus (HIV) to recipients with HIV. As allowed by the HIV Organ Policy Equity (HOPE) Act, the Secretary of HHS proposes to determine that participation in such clinical research should no longer be a requirement for transplantation of HIV positive kidneys and livers from donors with HIV to recipients with HIV. This proposed rule serves as publication of the Secretary’s proposed determination and proposes to amend the regulations to reflect this determination. Consistent with NOTA and current regulatory requirements, the Secretary’s proposed determination and the proposed corresponding regulatory revision, if finalized, will necessitate that the Organ Procurement and Transplantation Network (OPTN) adopt and use standards of quality concerning kidneys and livers from donors with HIV, as